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AND

J. H. TAYLOR, M.A., M.B., Ch.B.

Member of the Council of the British Medical Association

WITH A PREFACE BY THE

RIGHT HON. D. LLOYD GEORGE, M.P.

Chancellor of the Exchequer

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PREFACE

In the National Insurance Act it has been our aim to provide as far as may be for every worker some kind of shelter against the slings and arrows of fortune. In doing so we have not, I think, laid any real additional burden upon the wealth and productive activity of the nation. We have substituted for tardy relief provision made in anticipation of need, no more costly, but infinitely more effective and more kindly in its operation than distress funds or the Poor Law. Some remain, for the moment, wholly or partly outside the operation of the scheme. We have not even yet been able to reach the lowest deeps, to grasp the utterly incapable, the loafer, or the wastrel, and set him, too, on the firm ground of self-respecting manhood fit to withstand all the shocks of adversity, but we may claim to have established barriers to prevent men falling into that abyss of human despair.

We have in one great measure swept into the

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National Insurance Scheme some 10,000,000 workers hitherto unprovided for. Much remains to do, and in the coming years much may be done, but here at least is a beginning made on a broad and comprehensive plan.

The clear and concise explanation of a measure of such complexity, which touches our national life at so many points, confers rights and imposes liabilities upon so many millions of the population, and affects so many diverse interests, is of great importance to a large number of people who cannot but be anxious to know exactly what their position is. Moreover in such a measure, as past experience teaches us, it is inevitable, whatever care may be taken in the processes of draftsmanship, that points of difficulty will arise. Especially is this the case in an Act which traverses so much untrodden ground. I feel confident therefore that, in the work of administration, a book such as this, which endeavours to anticipate and elucidate the difficulties, will be of considerable value to a variety of inquirers. The authors have made a minute study of the Act, and are well acquainted with all its details and ramifications. It would obviously be impossible for me to express agreement with all the opinions indicated by them on questions of interpretation, but they appear to have collected a mass of information which cannot

fail to be of value, and to have dealt with their subject from every point of view. I heartily commend their book to all who wish to bear their share in working out the scheme which Parliament has initiated.

DAVID LLOYD GEORGE.

NOTE BY THE AUTHORS

After the storm and stress of Parliamentary discussion and public criticism, comes the less exciting but none the less arduous task of bringing into operation the machinery of a statute which makes a wholly new departure in social legislation. It is for the use of those who, in a greater or less degree, are entrusted with this task and for those who, without being directly responsible, are nevertheless as good citizens interested in the success of the measure, that this work is designed. We have attempted to describe, simply and broadly, the machinery of the Act and to bring together in a connected form matters which can be gathered only from a careful comparison of the various sections. The position and responsibilities of employers of labour and of insured persons under both Parts of the Act have been carefully set forth in a systematic manner and the finances of the measure have received special attention. What are the reserve values which unlock the funds of the Friendly Societies, what becomes of the State twopence, and how and when the promised extension of benefits will take place, are questions to which not only politicians but the public at large desire a simple but considered answer, which we have endeavoured to give. We hope the book may prove of value to officials and members of Friendly Societies, Trades Unions, and other Approved Societies, whose interests are so vitally affected, and that it may serve as a useful handbook for future members of the Insurance Committees which are to be set up for the administration of the Act.

Our task has not been merely one of exposition. Many grave legal questions will arise as to the interpretation of the measure, and we have attempted, in annotating the sections, to call attention to these problems and to assist in their solution by reference to decided cases and parallel statutes. In this respect

we trust that the members of the legal profession may find the book not without value in suggesting interpretations, if not always in finally solving the points of difficulty.

To the members of the medical profession, who will shortly be called upon to decide the manner and conditions under which they will perform the important functions assigned to them by this measure, we commend our work in the hope that it will assist them in finding the course which is desirable in their own interests and those of the public.

It has been our endeavour to deal fairly and fully with all points of interest without unduly trespassing on the realm of controversy. We may have erred in our interpretations and some mistakes there must be, but we shall be sincerely grateful to anyone who will supplement our efforts by disclosing our errors.

A. S. Comyns Carr,
W. H. Stuart Garnett,
1, Temple Gardens, E.C.

J. H. Taylor,
299, Eccles New Road, Salford.

January, 1912.

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ERRATA

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12	14.	—*For* "five years" *read* "seven years."
32	10.	—*For* "after the Act passes" *read* "after the Act comes into force."
107	28.	—*For* "five years" *read* "seven years."
121	30.	—*For* "and including" *read* "not including."
163	27.	—*For* "periods" *read* "persons."

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NATIONAL INSURANCE

NATIONAL INSURANCE

CHAPTER I

THE EMPLOYER

PART I

THE National Insurance Act casts upon employers of labour the duty of enforcing its compulsory provisions for the insurance of those who are in their service, and of supplementing out of their own pockets the contributions payable by the insured workers themselves. For a return for this liability, employers must look to a reduction in the Poor Rate, due to the transference to the National Insurance Fund of the greater part of the cost, due directly or indirectly to sickness, which now falls upon the guardians. No doubt they may also expect to find an increase in the quality, and consequent reduction in the cost, of production, following upon a better standard of health among the workers.

Who are to be insured.

The Act will come into force on July 15th, 1912, or such other date not later than January 1st, 1913, as may be appointed by Order in Council. By that date, every employer should have ascertained which of the persons by whom his work is done, whether in his business or in his home, is included in the compulsory clauses of the Act.

The classes of employment which bring a person within these provisions are described in detail in the First Schedule.[1] Briefly, every person employed in the United Kingdom under any contract of service or apprenticeship, and whatever the method of his remuneration may be, must be insured. It does not matter for how short a time he is employed nor for how many employers he works, nor from whom his wages or other remuneration are derived; but if his remuneration is at a

[1] Set out under s. 1 (2).

higher rate than £160 a year and the nature of his employment is not manual labour he need not be insured under the Act. If his employment is casual he will only be compulsorily insured if it is for the purpose of the employer's trade or business: persons employed casually for domestic purposes are not included. But it must be remembered that a person who is employed regularly, even though it be for only one day or one hour in the week, does not come within this exception: employment to be casual must depend upon a separate contract on each occasion.

Compulsory insurance does not begin until the employee has attained the age of sixteen and ceases when he reaches that of seventy. It applies equally to aliens and to British subjects (although the alien does not, with one exceptional case, receive the benefit of a State grant).

Out-workers.

In addition to those who are engaged under a contract of service proper, the Act extends to out-workers and those who ply for hire with a vehicle or vessel obtained from the owner under a contract of bailment. The person who gives out work for the purpose of his trade or business is responsible as employer for the insurance of the person to whom he gave it out, but not of any other persons among whom the first person may subdivide it. In any case, the wife of a person who is himself insured, if she is not wholly or mainly dependent for her livelihood on her earnings, is not to be compulsorily insured as an out-worker. In the same way, the owner of the vehicle or vessel which is let out to another person (*e.g.*, a cabman) is responsible as employer for the insurance of the man to whom he lets it. Part II. of the first Schedule enumerates certain other exceptions besides those already indicated from the general rules set out in Part I. Employment as a teacher entitled to benefits under a statutory superannuation scheme; as an agent paid entirely by commission, fees, or a share in the profits, unless he depends for his livelihood upon such employment under one employer, are entirely excluded; so is employment in the service of the husband or wife of the employed person, and employment without wages in the service of the parent or other person who entirely maintains the servant; also employment without wages on an agricultural holding. The Insurance Commissioners have power to exempt employment under the Crown or any public authority, and as a clerk or salaried official of a statutory company, if they are satisfied that the persons so employed are entitled to equal benefits independently

of the Act, and in the case of a statutory company also to rights in a superannuation fund; and the employment of inmates of a charitable or reformatory home who receive from the institution maintenance and medical attendance when sick. They may also exempt any employment which they regard as subsidiary, and employment on a fishing vessel, the crew of which are entitled to a share in the catch. On the other hand, they may include in the category of compulsory employment any of the occupations which are excepted in Part II. of the Schedule. Employment in the Mercantile Marine is also included and is separately dealt with below.

Settlement of questions.

The interpretation of these definitions, as experience of the Workmen's Compensation Act and similar statutes has shown, is not unlikely to give rise to difference of opinion. The Act provides three methods by which such differences of opinion may be judicially settled.[1] An employer, doubtful of his position, may apply to the Insurance Commissioners, who are to determine the question, but he (or any other person who feels aggrieved) may appeal against their decision on any question of law or fact to a County Court, and from the County Court on any question of law alone to a judge of the High Court. The Insurance Commissioners may, however, refer the question direct to the High Court for decision, in which case that decision will be final. The second policy open to an employer who is in doubt is one of masterly inactivity: he may wait for others to make the first move. He will then, however, if he is really liable to contribute, be guilty of an offence for which it is open to any person to proceed against him under the Summary Jurisdiction Act.[2] He will be liable to a penalty of £10 for each offence, and may, in addition, be ordered to pay to the Insurance Commissioners the contributions which he has failed to pay in the past. He may, on the other hand, obtain the opinion of the High Court on a case stated, on any question of law, and he will probably not be bound by any decision given under the first method of procedure, whether he was a party to it or not.[3] The third manner in which the question may be decided will arise when any person who is or has been in his employment, if he is a member of an "approved society," makes a claim for benefits and finds that owing to the failure of his employer to pay the contributions his claim is barred or benefits reduced. Such a person may

[1] S. 66. [2] S. 69 (2). [3] See notes to s. 66 (1) and s. 91 (1) [*b*].

sue the employer for the value of the right of which he has been deprived. The proceeding will then be that of an ordinary action, whether in the High Court or County Court, with the ordinary rights of appeal.

Contribution.

Assuming that an employer has satisfied himself or has been satisfied that it is his duty to make the contributions in respect of any particular employee, the next question that arises is the scale on which he must pay. The total contribution to be provided is 7*d.* for a man and 6*d.* for a woman,[1] the whole of which the employer must in the first instance, unless part of it is provided by the State, pay himself.[2] The method of payment contemplated is by means of stamps to be purchased by the employer at a Post Office and attached to cards, which when filled are to be taken by the employed person to the society or committee which administers his benefits. The employer is entitled to deduct from the remuneration of the servant that part of the contribution which the servant is required to provide himself, but in no case that part which is imposed upon the employer.[3] Remuneration includes not only wages but all allowances, whether in cash or kind, which are made in return for the service. Where there are no money payments received by the servant on account of his service from the employer or any other person, the employer will pay the whole contribution himself.[4] Where the remuneration, including the value of such allowances does not exceed 1*s.* 6*d.* a working day, 1*d.* will be paid by the State, the whole balance being paid by the employer, no deduction from wages being allowed. Where it does not exceed 2*s.* the State again finds 1*d.* and 1*d.* may be deducted from wages, the employer paying the balance. Where it does not exceed 2*s.* 6*d.*, 3*d.* may be deducted from wages, the employer paying the balance.[5] These scales do not apply where the servant is under twenty-one years of age, or where both board and lodging are found by the employer in addition to some money payment; in such a case, and in all cases where remuneration exceeds 2*s.* 6*d.*, the employer's contribution for both men and women is 3*d.*, and he is entitled to deduct the remainder from wages. The deduction can only be made at the time when the contribution is paid, if the opportunity is then missed it can never be recovered.[6] But

[1] Second Schedule.
[2] S. 4 (2).
[3] Third Schedule (2), (3), (8); s. 4 (2).
[4] Third Schedule (7).
[5] Second Schedule.
[6] Third Schedule (3).

in cases where the transaction does not involve any money payment passing from the employer to the servant, and only in those cases, the servant's contribution can be recovered in other ways than by deduction; *e.g.*, by summary process.[1] Such a case would be that of the cabman who receives no wages but on the contrary pays over to his employer a proportion of his day's takings.

Questions which may arise as to the amounts to be paid respectively by master and servant are to be determined without appeal by the Insurance Commissioners,[2] who may, however, provide that questions as to the total amount payable in respect of any person (not its distribution between master and servant) shall be determined by the society of which that person is a member.[3] Again, however, it is open to the employer, if he wishes, to test the question by waiting until he is summarily prosecuted or sued by a servant who has been deprived of benefit as described above.

Time of payment.

A contribution is due from the employer for every calendar week during the whole or any part of which an employed contributor has been in his service, unless no services have actually been rendered during the week, and either no remuneration has been paid (*e.g.*, at holiday time), or the servant has been in receipt of sickness or disablement benefit, whether remuneration has been paid or not.[4] It does not, however, necessarily follow that the stamps need be affixed to the card every week: the Insurance Commissioners may prescribe other intervals, and the Act clearly contemplates that they shall be affixed at such time as wages are due.[5]

Occasional workers.

There are two other exceptions to the provision that a contribution is due for a part of a week: if some previous employer has paid the week's contribution it need not be paid again. This covers the cases of the regular worker who changes his employer during the week, of the casual, and of the worker whose employment, though regular, is occasional. The Act provides[6] that the first employer in any week is the one to pay; that is to say, an employer must not permit a worker to leave his service, even if he has been employed only for an hour, before the end of a calendar week (Sunday midnight) without paying his contribution. The Insurance Commissioners may, however, by regulation appoint some other employer than the first to pay the contribution,

[1] Third Schedule (4).
[2] S. 66 (1) *c*.
[3] S. 66 (1) [ii].
[4] The Third Schedule.
[5] S. 4 (1).
[6] The Third Schedule (5).

or divide it between them. The Board of Trade may also, in the case of an employer who engages his workmen through a Labour Exchange, arrange for that Exchange to carry out for him any of the duties (including the payment of contributions) imposed upon him by the Act,[1] and the arrangement may extend to all workmen then in his service.

The last exception is that of out-workers: in their case the Insurance Commissioners may provide that the contributions to be paid may be determined according to the work actually done, instead of the week in which it was done.[2]

Clerks, etc. There are two exceptional cases in which the rates of contribution may be varied. In any classes of employment where there exists a custom or practice by which full remuneration is paid during the illness of a servant, the Insurance Commissioners are to make a special order applying to the trade generally, or in any locality, giving any employer in that trade or locality the following option:—Such an employer may undertake to pay to all insured persons in his employment full remuneration for six weeks (continuous or not) in any year, while that person is suffering from any illness which arose during the employment, although it may last beyond the termination of the employment, so long as it does not last beyond the end of the calendar year. Alternatively, if he engages any person for not less than six months certain he may undertake to pay full remuneration during every period of illness lasting less than six weeks, and also for the first six weeks of any longer period; he will not then be liable to pay anything after the termination of the engagement. In return for the undertaking of this liability, the employer will be entitled to a reduction of his own contribution by 1*d.* a week in the case of a man, and ½*d.* a week in the case of a woman, the servant's contribution being reduced in each case by 1*d.* The fact of his paying at this reduced rate will be conclusive evidence against him, in any action by the servant, of his having undertaken the liability to pay full remuneration during the above periods of illness. The servant will not during those periods be entitled to any sick pay, which will, however, become due when the employer's liability ceases.[3] In other cases the insured person will be entitled to sick pay although he may be receiving wages or any other form of remuneration (including board and lodging) from his employer. Any employer who wishes to avail himself of this alternative scheme

[1] S. 99 (1). [2] The Third Schedule (10). [3] S. 47.

may apply to the Insurance Commissioners for permission to do so, although no such custom exists in his trade or locality. The permission will only be granted if the Commissioners are satisfied that the persons employed by him are willing.

Seasonal trades.

The other exception exists in the case of seasonal trades. If the Insurance Commissioners are satisfied that any employers who carry on a business subject to periodical fluctuations retain their workpeople on short time during the periods of depression, they may vary the rates of contribution, increasing them in the busy seasons and reducing them during the slack periods.[1]

Merchant shipping.

The case of the Mercantile Marine demands special treatment. Compulsory Insurance applies to employment on any ship registered in the United Kingdom, or any other British ship of which the owner, or if there is more than one owner, the managing owner or manager, resides or has his principal place of business in the United Kingdom.[2] In the case of the Home and Coasting Trade the ordinary rates of contributions apply, but in the case of foreign-going ships and ships engaged in regular trade on foreign stations the employer's contribution will be reduced by 1*d.* a week to 2*d.*, the seaman's contribution remaining at 4*d.* But every four contributions paid by the seaman will be reckoned as five.[3] Except where a ship is engaged in regular trade on foreign stations the employer will be bound to pay the same contribution on his own behalf in respect of a man who is neither domiciled nor has a place of residence in the United Kingdom, but no contribution will be payable on behalf of the man himself. The contributions paid by employers in respect of such men will be paid, together with the contributions of all seamen resident in England who choose to join it, into the funds of a Seamen's National Insurance Society on the Managing Committee of which shipowners will have representation.[4] The entire funds will be administered for the benefit of seamen resident in England.

Workmen's compensation.

These are the duties and liabilities of employers with respect to the payment of contributions. There are, however, one or two other matters in the Act which affect their position. By Section 11 sickness and disablement benefit are not payable to any insured person who is entitled to compensation or damages from his employer or any other person under the Workmen's Compensation Act 1906, or any scheme certified thereunder, or under

[1] S. 50.
[2] First Schedule, Part I (*b*).
[3] S. 48 (2).
[4] S. 48 (4, 5, 6).

the Employers' Liability Act, 1880, or at common law, in respect of any injury or disease. That section throws upon an employer the duty, where he enters into an agreement as to the amount of compensation with a workman who has met with an accident in his employ, of sending to the Insurance Commissioners notice in writing, within three days, of the particulars of the agreement. In the case of an insured person the Registrar of a County Court may refuse to record the Memorandum of the Agreement and refer the matter to the judge. The Society or Committee which administers the benefits of such a person may take proceedings on his behalf to enforce a claim against the employer or other person responsible. In the event of failure, however, the Society or Committee will be liable for costs.

Insanitary conditions.

Should the workpeople of any employer suffer to a considerable extent from any disease due to the conditions or nature of the employment, or to any neglect on the part of the employer to observe or enforce any act or regulation relating to their safety or health, if there is no civil remedy under the Workmen's Compensation Act, the Employers' Liability Act, or at common law, this Act provides a new procedure. The Society or Committee which administers the benefits of those workers, or the Insurance Commissioners, may claim against the employer the amount by which their expenditure has exceeded the normal rate owing to the conditions of the employment.[1] If they fail to come to terms an enquiry may be held by a person appointed by the Home Secretary or the Local Government Board, who may, if satisfied that the excess is greater than 10 per cent., order the whole of that excess to be paid by the employer.

Approved societies.

The employer is not of course directly interested in the administration of the funds. Most employers will, however, feel, as they have in the past, a natural desire to see that their workpeople derive full advantage from the contributions paid. It cannot be too strongly insisted that this will never occur (except in the case of very irregular employment) unless the "insured person" becomes a member of some "approved society." An employer would therefore do well to urge those in his service to enter one or other of the societies which will become approved for the administration of the scheme.

Employers' superannuation funds.

The act contemplates the recognition of Employers' Superannuation or Provident Funds. Societies of this kind may be

[1] S. 63.

approved notwithstanding that the employer is entitled to representation (not exceeding one quarter of the whole) on the Committee of Management if, in addition to the contributions which he is bound under this Act to pay, he makes himself responsible for the solvency of the funds or is liable in a substantial manner to supplement the benefits.[1] No such society will however be approved if membership of it is made a condition of employment; nor unless a member can transfer his membership (and his transfer value as defined by the Act) to another society, or if he leaves the employment, can retain his membership of the society if his health is such that he cannot enter another. Societies of this character, although their membership may be less than five thousand, may be exempt from the necessity of grouping with other societies for the purpose of valuation. They will be liable in common with other societies to prepare a scheme for the alteration of their existing benefits in conformity with the Act,[2] but if the effect of that alteration would be to injure the sum available for the payment of pensions under their existing arrangements, the Insurance Commissioners may authorise them to take into account for the purpose of that liability the prospective extension of benefits which will accrue under the Act when reserve values have been written off. There is therefore no reason why such funds should be wound up, or in any way prejudicially affected by the operation of the Act.

Part II.

There is this broad justification for the demand made by Part II. of the National Insurance Act for contributions from the employer towards the National Unemployment Fund, that unemployment is an evil in which the employer has himself some share. Though he cannot abolish unemployment he can to some extent vary its incidence or mitigate its hardships, with the result that there is as between the factories and workshops of different employers a variation in the rates of unemployment which is not found in any commensurate degree in the rates of sickness. It is therefore only just that a part of the burden of contributions should be remitted to those employers who, by forethought and wisely conceived action, do to some extent

[1] S. 25 (1). [2] S. 73.

mitigate the hardships of unemployment falling upon their own workmen, or take adequate steps to distribute such employment as is available evenly between them.

There are two methods by which the more violent fluctuations of employment in individual cases can be kept in check. Taking the workman as the unit, it is in many cases possible to distribute his work and that of the whole factory more evenly throughout the year. So far as contracts will permit, the employer can in consequence of such a redistribution of output increase the number of men permanently employed while reducing the number of extra hands taken on in times of good trade and discharged when trade is bad. To the employer who can and does take this course of distributing his output so far as possible evenly throughout the year certain rebates in contribution are allowed; he does, in fact, by his own manufacturing process insure against unemployment himself, and it would be unreasonable to ask from him the same contributions towards insuring against distress resulting from unemployment as from the employer who takes no such steps. Precisely the same argument applies (though perhaps in less degree) to the employer who, taking the total output of his factory in any one week as the unit, distributes that as evenly as possible between his various hands; that is to say, the employer who in a period of distress puts the whole factory or workshop on short time instead of discharging a limited number of hands. He also insures his men. He pays to those who would otherwise have been discharged wages which are in effect deducted from the men who would otherwise have continued in full-time employment. He too deserves, and, as will be seen hereafter, receives considerable rebates in the matter of contributions.

Insured trades.

But excepting such special provision the rate of contribution to the Unemployment Fund is uniform for the employers of all workers in "insured trades." What those trades are can be seen by reference to the Sixth Schedule of the Act. They consist generally of the two great building and engineering groups of industries. It should be noticed, however, that the question whether a given workman is employed in an "insured trade" or no depends rather on the nature of his work than on the business of the employer.[1] It may well be, therefore, that the owner of a large factory will have in his employment some half-

[1] Section 107 (2).

dozen workers in "insured trades," while the rest of his employees are not so engaged: the painters who decorate the factory and one or two mechanics engaged in minor repairs to the machinery will come in under paragraphs (1) and (4) of the Sixth Schedule, while the rest of the employees engaged, say, in spinning, or weaving, or tanning, are not within Part II. of the Act. It is the duty of the employer to ascertain in respect of which workmen he is liable for contributions towards the Unemployment Fund,[1] and he has the opportunity of seeking a decision on the point through the Board of Trade from the umpire,[2] whose decision is conclusive, at least for the purpose of protecting the employer who has not paid contributions.

Workmen.

The jurisdiction of the umpire is, however, so far as employers are concerned, limited to the question whether or no a certain workman or class of workmen is employed in an "insured trade"; but he has not jurisdiction to decide whether or no any given person is a "workman" at all, and it is only in respect of "workmen" that contributions are payable and that the question as to their trade arises. A "workman" is defined[3] by the Act as "a person of the age of sixteen or upwards employed wholly or mainly by way of manual labour who has entered into, or works under, a contract of service with an employer"; and later in the section comes a specific exception of "indentured apprentices." But the question must arise with reference to apprentices not indentured and with numerous other workers, whether in fact they do work under a contract of service. Clearly, a contract of apprenticeship is not, generally speaking, one of service; the two have always been distinguished in law.[4] Assuming, however, that the person employed is a workman and in an "insured trade" the duty of the employer to pay contributions in respect of him arises. He may seek a decision on the question of trade from the umpire, and if the decision of the umpire is against him he will be liable to prosecution if he fails to pay, and the umpire's decision binds the Court.[5]

Umpire.

On the other hand, the employer is in no way bound to go before the umpire unless and until steps have been taken by the Board of Trade to prosecute him for non-payment of contributions in a specific case. Proceedings are summary, but subject of course to the right of the defendant to have a case stated

[1] Sections 85 (2), 101 (2). [2] See section 91 (1) [*b*]. [3] Section 107 (1).
[4] See notes to section 107 (1). [5] Section 101 (6).

before the Divisional Court.[1] But in this case, too, if the question of the workman's trade arises in the proceedings it must be referred to the umpire for decision, though the umpire will have power, and may perhaps be compelled, to state a case on any question of law arising in that connection.[2]

Contributions.

If, however, a workman be a workman in an "insured trade," the Act requires contributions of 2½d. per week from his employer and 2½d. from himself, and the employer is liable in the first instance to pay both contributions,[3] unless in a special case other regulations are made by the Board of Trade; and the employer can deduct from the workman's wages the 2½d. which represents one half of the contribution.

Change of rates.

Circumstances may impose a still heavier charge upon employers. The Board of Trade has power once in every five years to revise the rates of contribution if they should appear either larger or smaller than are required to provide the benefits.[4] While the contributions can be reduced to any extent they cannot be raised by more than 1d. from the employer and 1d. from the worker. Whether raised or reduced, contributions of employer and workman must remain equal. Power is also given to the Board of Trade on the requisition of the Treasury to raise a levy, again equally divided between employers and workmen, and limited to 1d. a week from each, to meet temporary insolvency of the fund due to heavy unemployment calls or the like; but this levy can be raised only when money has already been advanced by the Treasury to meet the distress and the levy must cease three months after the loan has been repaid.[5] Consequently when bad trade begins and heavy drawings are made upon the fund, the levy will not generally be imposed, as charitable subscriptions are demanded nowadays, just when money is wanted elsewhere, but the Treasury must first be called upon to make an advance during the actual period of distress, and the levy, which is required really to repay the Treasury, can be raised when trade improves and the money both of employer and workman is more easily available for the purpose.

Short employments.

Every employer of a workman is liable to contribute in respect of him.[6] There is no exemption for the second employer in the week analogous to that given in Part I., but if the employment

[1] Section 101 (2) and note thereto.
[2] See Section 101 (6) and note thereto.
[3] Section 85 (3).
[4] Section 102.
[5] Section 93 (2).
[6] Section 85 (2).

lasts only for one or two days, the employer is liable to pay at the rate of 1d. a day only for himself and 1d. a day for the workman.[1] But obviously the contribution of 1d. a day is a very poor exchange from the employer's point of view for one of 2½d. a week.

Labour Exchanges.

A special provision is, however, made for employers who engage their casual labour through Labour Exchanges.[2] The employer can arrange with the Exchange that it shall undertake the whole duty of contributing and stamping cards on his behalf and on behalf of the workmen, he himself paying his account quarterly or at other stated periods, and in this case he need pay only 2½d. a week in respect of each workman engaged by him through the Labour Exchange for successive periods in one week; that is to say, he applies for a workman, and it makes no difference to his contributions whether he gets always the same workman or a different one on each day. In such cases, the workmen, too, may arrange for a corresponding reduction or refund of their contributions.

Permanent servants.

It is, however, clearly unjust that employers and workmen should contribute to the Unemployment Fund in cases where, in consequence of the position of the workman, it is quite impossible that he should ever draw benefit therefrom; consequently, complete exemption is given to those workmen who, in the opinion of the Board of Trade, are serving in as permanent a position as established workmen in the service of the Crown.[3] And a similar advantage is given to those employers who, although not offering a guarantee of permanent service to their workmen, nevertheless do in fact, in any one year, keep them permanently employed. If an employer keeps a man constantly in his service throughout the year and pays forty-five contributions in respect of him, which leaves a margin of seven weeks for sickness, holidays, and for slack trade, during which the relation of master and servant continues, the employer can, at the end of the year, claim a return of one-third of all his contributions,[4] apparently without thereby reducing the right of the workman to claim unemployment benefit in the future upon the credit of those contributions.[5]

Short time.

A similar advantage is given to the employer who, at the approach of a depression in trade, puts either the whole of his factory, or one shop, or class of workmen, on short time so as to

[1] Eighth Schedule. [2] Section 99. [3] Section 107 (3), (4).
[4] Section 94 (1). [5] Seventh Schedule.

avoid discharges, and who does not during that time deduct the workmen's contributions from their reduced wages. Such an employer can recover from the Board of Trade[1] the whole of the contributions, his own and the workmen's, paid by him during such a period of depression. But to do so, he must show first, that he reduced the hours of work by one-sixth, or else by the whole of a working day of not less than four hours (*e.g.*, Saturday morning), and that there was a period of depression in his business which required to be met by some such provision. Clearly, however, an employer will be reluctant to let slip his power of deducting their share of contributions from his workmen without some guarantee that he will be able to recover the whole from the Board of Trade. The Act therefore gives him power to consult the Board of Trade beforehand, and to obtain an assurance that the Board considers the occasion a fitting one for the adoption of short time.[2] By such means, encouragement will be given to employers in other trades to adopt the system prevalent in the cotton industry at the present time, by which the Employers' Federation do, to a great extent, succeed in abating the distress incident to slack trade by a uniform distribution of such employment as can be found.

[1] Section 96 (1). [2] Section 96 (2).

CHAPTER II

THE INSURED PERSON

Part I

Of all persons affected by the National Insurance Act the one most seriously concerned is the insured worker. His contribution is the heaviest in proportion to his means, and he, and he alone, receives the bulk of the benefit. Some indirect benefit there may be, and doubtless will be, to other persons from relief to the poor rate and possibly from improved national health, but the immediate beneficiary is the insured person himself.

Employed contributors.

There are two great categories of "insured persons." The first is that of "employed contributors," comprising all persons of the age of 16 and upwards, but under that of 65, who work under a contract of service or apprenticeship, receiving less than £160 a year.[1] It includes also persons who receive more than £160 a year as wages for manual labour. These contributors are compelled to be insured; their contributions are deducted from their wages,[2] so that the workman has no power of refusing to contribute, nor does the Act inflict any penalty upon him for such refusal.

There are, however, three classes who have the right to exemption from compulsory contribution if they choose to exercise it. The first consists of employed persons with a pension or private income of 10*s.* a week (£26 a year) or more, and the second is that of persons who are ordinarily dependent upon somebody else; married women, for instance, who work at a factory or charing.[3]

[1] S. 1 (2), (4) and the First Schedule, *q.v.* for a detailed exposition of the classes of employment included and excluded: also Chap. I, Part I.

[2] S. 4 (2) and the Third Schedule.

[3] S. 2 (1).

The third is that of Irish migratory labourers.[1] These workers may, if they wish, claim exemption, and will not then contribute to the scheme, but the employer must still contribute in respect of them lest he should bring pressure to bear upon them to claim exemption.[2] Contributions so paid by employers may be used for the benefit of these uninsured workers, if they afterwards become employed contributors.

Voluntary contributors.

The second category is that of "voluntary contributors": persons, that is, who choose to take advantage of the State scheme and of the State assistance given to persons who insure under it. Only those who depend upon an earned income of less than £160 a year are allowed to join the scheme, but persons who have been insured for five years can continue as "voluntary contributors," notwithstanding an increase in their income.[3] "Voluntary contributors" pay the whole contribution—the employer's share as well as the worker's, for the obvious reason that they have no employer.

Contributions.

To take first the case of the "employed contributor": he becomes an "insured person" so soon as the Act comes into operation, and he will then begin to contribute. Indeed, he contributes for six months before receiving any benefit, other than (possibly) sanatorium benefit, as is the practice in many Friendly Societies at the present time. Contributions, therefore, deserve first consideration.

There is no duty upon the "employed contributor" himself to contribute. His employer is bound to pay 7*d.* a week for each man employed and 6*d.* a week for each woman,[4] and is allowed to deduct 4*d.* from the wages of the man and 3*d.* from those of the woman,[5] except in the case of underpaid workers and some other exceptional cases[6]; but the worker himself is not bound to make any payment whatever. When unemployed he need not contribute; when in receipt of sickness or disablement benefit—whether he is employed and receiving wages or not—no contributions whatever are payable either by himself or by his employer;[7] such contributions are, in fact, taken as paid.

Arrears.

But though the worker is not bound to pay contributions during unemployment it may be worth his while to do so. If he is a

[1] S. 81 (3).
[2] S. 4 (4).
[3] S. 1 (3)
[4] S. 4 (1), Second Schedule.
[5] *Ib.*
[6] *Ib.* and the Third Schedule (4), (7), (10).
[7] S. 10 (4) (*a*) and the Third Schedule (1).

member of an approved society his right to sickness benefit may depend upon his arrears.[1] So soon as he is four weeks in arrear on the average for every year since he came into insurance his sickness benefit is reduced by *6d.* for a man and *3d.* for a woman, and so on for every additional week of average arrears, until it is reduced to *5s.*[2] and the arrears have mounted up to one-quarter of the whole period of insurance, when the right to sickness and disablement benefit stops. His right to other benefits does not stop until his arrears have totalled one-half of the whole period of his insurance.[3] Clearly then it may be worth his while to pay up his own arrears with a view to securing full sickness benefit. His society may, however, excuse him that part of his arrears which represents employer's contributions, whether he pays up his own share or not, and if he does so before the end of two calendar years may take the whole as paid and reinstate the worker in his full rights.[4]

The benefits payable to a member of an "approved society" will be reduced in just the same way if, although he is employed, his employer fails to make the proper payments on his account. In that case, he has a right of action against the employer and can claim from him the whole sum that he has lost by the reduction or the abolition of benefits. So soon as he is ill his right of action against the employer accrues and he is entitled not only to get back the benefits which he has lost, but to be put in a position to draw from his society in the future all the benefits which he would draw if the contribution had been duly paid.[5]

Deposit contributors.

If an insured person is not a member of an "approved society" he becomes a "deposit contributor."[6] His contribution and his employer's contribution are paid into the Post Office Fund and he can draw upon that fund when qualified for benefit to the extent of his credit and two-sevenths more—the balance being the contribution paid by Parliament. But when his balance in the fund is exhausted then his benefits cease, so that he is acutely interested in getting his contributions paid; since, however, there is no power to excuse him the employer's contributions (so that if he wishes to pay up arrears he must pay the whole *7d.*, to get in exchange only a contingent interest in *9d.*), it is scarcely to be expected that any

[1] S. 10.
[2] S. 10 (2) and the Fifth Schedule.
[3] S. 10 (1).
[4] S. 10 (5) and (6).
[5] S. 70.
[6] S. 42.

deposit contributor will attempt to keep up the contributions while unemployed, and it is doubtful whether he is even entitled to do so. On the other hand he is not liable to any reduction of benefit (so long as he is in credit) for arrears.

Underpaid workers.

The general rule that the employer pays 3*d.* and the worker 4*d.* if a man, and 3*d.* if a woman, is subject to modifications in the special case of those who work for low wages. If the employer does not provide both board and lodging, and the wage is below 2*s.* 6*d.* a day, including in the wage every kind of remuneration then the worker, if over 21 years of age, pays only 3*d.*, the employer paying 4*d.* for a man, 3*d.* for a woman. When the wage is below 2*s.* the worker's contribution is reduced to 1*d.*, the State providing another 1*d.* and the employer the balance of 5*d.* or 4*d.* for man or woman. When the wage is below 1*s.* 6*d.* a day the worker pays nothing whatever, the State paying 1*d.* and the employer the whole balance.[1] So also the employer, although he must pay for those who work without wages (unless they are members of his own family or other persons maintained by him, or the employment is on an agricultural holding), cannot recover from them any part of the cost.[2]

Contributions of voluntary contributors.

Generally, voluntary contributors pay 7*d.* if men, 6*d.* if women[3] and are entitled to the same benefits as employed contributors, but those who join the scheme above the age of 45 must pay a higher contribution. They will receive full benefits but they must pay whatever contribution is necessary to provide seven-ninths of their cost whatever that cost may be, the State providing the other two-ninths. It is estimated that in the case of a man joining at 55 the cost of the benefits will represent a contribution of, roughly, 1*s.* 2*d.* a week, so that a voluntary contributor who desires to join at that age will be under the necessity of paying a contribution of tenpence or more.

Up to the age of 45, however, a man duly qualified is free to join and pay 7*d.* only, provided that he joins within six months of the commencement of the Act. After six months, any persons who are qualified may join only on contributing at a rate appropriate to their age,[4] specified by the tables of the Insurance Commissioners.

Benefits.

The benefits conferred by the Act upon insured persons are

[1] The Second Schedule.
[2] The Third Schedule (7).
[3] S. 5 (1).
[4] S. 5 (1).

of two kinds: the Minimum Benefits,[1] to which, with certain qualifications, every insured person is entitled, and the Additional Benefits,[2] to which an insured person may become entitled if he is a member of an approved society which shows a disposable surplus[3] on valuation. In each case a contribution of two-ninths in the case of a man and one-fourth in the case of a woman will be made by Parliament towards the cost of the benefits.[4] The Minimum Benefits are:—

Medical benefit.

First, Medical Benefit,[5] that is to say, the right throughout life to free medical attendance by any doctor who applies to the Insurance Committee for the County or County Borough in which the insured person resides for a place on their list,[6] and who consents to accept him as a patient.[7] If the doctor of his choice refuses him he will be assigned by the Committee to one or other of the doctors on the list.[8] Medical Benefit includes free medicines and drugs, and such appliances as the Insurance Commissioners may allow.[9] It will not be available until six months after the commencement of the Act, but at any later time will be available from the moment of entry into insurance.[10] It does not include any right to attendance in respect of a confinement.[11] As one of the Additional Benefits the right to medical treatment may be extended to the dependants of an insured person.[12]

Sanatorium benefit.

Secondly, Sanatorium Benefit:[13] that is to say, the right throughout life to treatment in a sanatorium or otherwise for an insured person suffering from consumption or any other disease which the Local Government Board may appoint.

The Insurance Committee which administers this benefit may also pay or advance the travelling expenses of an insured person to and from the sanatorium.[14] This benefit may be extended to his dependants if the sums available for it allow, independently of any surplus in the member's own society.[15] There is no waiting period for sanatorium benefit prescribed in

[1] S. 8 (1).
[2] The Fourth Schedule. Part II.
[3] S. 37.
[4] S. 3.
[5] S. 8 (1) [*a*].
[6] S. 15 (2) [*b*].
[7] *Ib.* (*c*).
[8] *Ib.* (*d*).
[9] S. 15 (5).
[10] S. 8 (8) [*a*].
[11] S. 8 (6).
[12] The Fourth Schedule. Part II (1).
[13] SS. 8 (1) [*b*] and 16.
[14] S. 16 (6).
[15] S. 17.

the Act, but in practice it will obviously be difficult for it to be granted before medical benefit.

Sickness benefit.

Thirdly, sickness benefit,[1] a payment of 10s. a week for a man and 7s. 6d. for a woman, beginning on the fourth day of illness and continuing for twenty-six weeks; notice of the illness must be given before the claim can be allowed. An insured person will not be entitled to this benefit until twenty-six weekly contributions have been paid in respect of him,[2] and it is this benefit which, in the case of a member of an "approved society," will be reduced if he is in arrear.[3]

Disablement benefit.

Fourthly, disablement benefit,[4] being a continuation of sickness benefit, at the rate of 5s. a week for man or woman and lasting as long as the illness. The right to this benefit does not accrue until 104 weekly contributions have been paid in respect of the insured person,[5] but both sickness and disablement benefit will become payable as soon as the necessary period has elapsed and the necessary contributions have been paid, although the illness began before that time. The right to both of these benefits ceases at the age of 70.[6] The test for both of them is that the claimant must be rendered incapable of work, that is, of any work whatever, by some specific disease, or by bodily or mental disablement, but any disease or disablement in respect of which he is entitled to compensation or damages from his employer or any other person under the Workmen's Compensation Act, 1906, the Employers' Liability Act, 1880, or at common law, is excluded.[7] In that case, however, his society or Insurance Committee may assist him to enforce his rights.[8] Any approved society may substitute for sickness or disablement benefit or part of them (but not for other benefits) any of the additional benefits, and may give its members an option in the matter.[9]

Maternity benefit.

Fifthly, maternity benefit[10]: that is to say, a payment of 30s. in the case of the confinement of the wife, or where the child is a posthumous child, the widow of an insured person, or of any other woman who is herself an insured person. Where a married woman, or in the case of a posthumous child, a widow is herself an insured person, she will be entitled to sickness or disablement benefit as the case may be during her confinement, in addition to

[1] S. 8 (1) [c].
[2] S. 8 (8) [b].
[3] S. 10.
[4] S. 8 (1) [d].
[5] S. 8 (8) [c].
[6] S. 8 (3).
[7] S. 11.
[8] S. 11 (2).
[9] S. 13.
[10] SS. 8 (1) [e] and 18.

maternity benefit.[1] But any other woman will not be entitled to those benefits for four weeks after her confinement unless suffering from some illness not connected with it. The right to maternity benefit will not accrue until 26, or in the case of a voluntary contributor fifty-two, weekly contributions have been paid.[2] The benefit will be administered in cash or otherwise at the discretion of the society or Insurance Committee concerned, but in every case the mother will have the right to choose a doctor or midwife to attend her, whose fee must be paid out of the 30*s.* benefit.[3]

Hospitals.

Sickness, disablement, and maternity benefit will not be paid to a person in a hospital, infirmary, or sanatorium, but may be applied for the maintenance of his dependants, if any, or if he has none may be paid for the upkeep of the hospital or infirmary, or in the case of a sanatorium to the Insurance Committee. Where a married woman who is herself insured and entitled both to maternity and sickness or disablement benefits goes into a hospital or infirmary for her confinement, the maternity benefit will be paid to the hospital or infirmary, but the sickness or disablement benefit will be applied for the maintenance of her dependants, if any.[4] Except in the cases of the Army, Navy, and Mercantile Marine, both contributions and benefits cease on an insured person leaving the United Kingdom temporarily or permanently;[5] but in the case of permanent emigration, a member of an approved society is entitled to have his transfer value paid over to any society in the British possession or foreign country to which he is going, which gives reciprocal advantages to those of its members who come to reside in this country.[6] Or if he does not join any such society and remains a member of his own society, it may be transferred to the account of that society independently of this Act.[7] A deposit contributor in the same circumstances will be entitled to have four-sevenths, or in the case of a woman, one-half of the amount standing to his credit paid out to him.[8]

Every member of an approved society has a right to those benefits in full as long as his society has funds to pay them, though the sickness benefit may be reduced when he falls seriously into arrear, and arrears may reach a stage when all benefits cease.[9] But assuming his contributions are paid he

[1] S. 8 (6).
[2] S. 8 (8) [*d*].
[3] S. 18 (1).
[4] S. 12.
[5] S. 8 (4).
[6] S. 32.
[7] S. 33.
[8] S. 42 [*g*].
[9] S. 10 (1): Fifth Schedule.

has a right to those benefits, and if his society or branch (apart from misconduct) is unable to pay them, the deficiency, or at least three-fourths of it, must be made good out of the surplus which other branches, or, in the case of a society with less than 5,000 members, other such societies,[1] have available.[2] If, however, the deficiency is due to misconduct it is true that his benefits may be reduced to a limited extent, or a levy may be made,[3] but the Commissioners have power in such a case to take over the management of the society or branch and to restore it as best they can to a condition of solvency.[4]

Additional benefits.

Besides Minimum Benefits there are Additional Benefits,[5] which an approved society can give to its insured members at the end of each three years if it is found upon valuation to have a surplus available.[6] These include an increase of the minimum cash benefits, allowances for partial disablement and during convalescence, pensions, distress payments, and remission of contributions, but not death benefits. It can give him in fact all benefits that the money will pay for, that is to say all benefits which can be given to a man joining at sixteen and paying a contribution of 7*d.* a week, the amount depending on the management of the society and the health of the members.

Extended benefits.

Finally, there is a prospect of Extended Benefits at the close of a period of some 18 years.[7] To the worker who joins as a young man, and who does not expect in the course of nature to draw heavy sick pay before reaching the age of 40 or 45, this prospect of extended benefits is of real value. The fact is that for a period of 18 years a part of the contributions goes to a fund for equalising the benefits of old and young; at the end of that time, when the process of equalisation is complete and the fund provided, the whole of the contribution of 7*d.* a week and the whole of the State grant of 2*d.* will be available for the purpose of paying benefits, unless some further small accumulation is made; and the benefit so extended will be paid to insured persons when the period is complete.[8]

Deposit contributors.

It is important to remember that all these benefits are guaranteed, within limits, to members of approved societies only. The deposit contributor will get only benefits to the

[1] S. 39.
[2] SS. 37 (1) [*b*], 38 (1) [*a*].
[3] S. 38 (1) [*b*, *c*, *d*].
[4] S. 38 (1) [*e*].
[5] S. 8 (1) [*f*], Fourth Schedule, Part II.
[6] SS. 36, 37.
[7] S. 8 (9).
[8] SS. 8 (9), 55 (4).

extent of his balance at the Post Office, plus the State grant, and is, therefore, not really insured. But the position of deposit contributors must be reviewed by Parliament before Jan. 1st, 1915,[1] when fuller information with regard to them will be available. It is to be hoped that workers will not fail to make certain of receiving the benefits offered by joining an approved society, and that their employers will endeavour to put the facts before them and encourage them to do so. And it should be clearly understood that to join a society under the Act is not to incur any further liability for contribution, beyond the 4*d.* deducted from wages. Societies will be able to accept members without charging any subscription, and to pay them all benefits out of the funds provided by the State, and by their own and their employers' contributions under the Act.

Reductions of benefits.

There are, however, six classes of insured persons (in addition to those already mentioned), who will not receive all the benefits in full:—

The first is that of persons under the age of twenty one, not married, and having no members of their family dependent on them; their sickness benefit is reduced to 6*s.* for the first, and 5*s.* for the second thirteen weeks, for boys, and to 5*s.* and 4*s.* respectively, for girls, in whose case disablement benefit is also reduced to 4*s.* a week; but the rates will rise to the normal on their passing the age of twenty one, or marrying.[2]

The second is that of employed contributors who become insured within one year after the commencement of the Act, and are then over the age of fifty, for whom the sickness benefit is cut down to 7*s.* a week for men, and 6*s.* for women, or, if over the age of sixty at that time, to 6*s.* for the first, and 5*s.* for the second thirteen weeks for both sexes, unless at the date of claim 500 weekly contributions have been paid by or in respect of them.[3]

The third is that of employed contributors who enter when above the age of seventeen after one year from the commencement of the Act, whose benefits will be reduced unless they pay additional contributions equal to the voluntary rate for their age.[4]

Voluntary contributors who become employed within the meaning of the Act, and members of approved societies who have been suspended from all benefits owing to arrears, may

[1] S. 42.

[2] S. 9 (1) and the Fourth Schedule, Part I, Table B.

[3] *Ib.* (3) and Table C.

[4] *Ib.* (4).

sist to be treated on the same basis, the former, however, receiving rather better terms.[1]

The fourth case is that of employed contributors, whose employers, with or without their consent, exercise the option given by Section 47 of undertaking the liability to pay full wages during certain periods—roughly six weeks—of sickness. The contribution payable by the contributor will in that case be reduced by one penny a week in the case of a man and the same in the case of a woman. During the six weeks when full remuneration is received from the employer, no sick or disablement pay will be due to the insured person, but it will begin when the liability of the employer ceases, and the period for which full sick pay runs will be reduced by six weeks. If such a person becomes unemployed he will continue to be subject to the same conditions; the payment of contributions at this reduced rate will be conclusive evidence against the employer of his liability to pay full remuneration during the stated periods of illness.

The fifth case is that of a man over 65 and under 70 at the commencement of the Act. He is not strictly speaking an insured person at all, but if he is employed within the meaning of the Act, the ordinary contributions will be payable in respect of him and to each weekly contribution the State will add *nil*. He will be entitled to such benefits as his society, or if he does not join a society, the Insurance Committee, may determine, to which the State will of course make no further contribution.[2]

The sixth case is that of aliens. Their employers will be liable to pay the same contributions on account of them, and entitled to deduct the alien's own contribution from his wages in the same way as in the case of British subjects, but no part of the cost of benefits or their administration will be provided by Parliament and the money benefits will be proportionately reduced,[3] except in the case of an alien, who, on May 4th, 1911, had been in this country for five years and was a member of a society which becomes "approved."[4] The British-born widow of an alien is not to be treated as herself an alien for the purposes of the Act.[5]

arried
omen.

The case of the married woman requires separate treatment. Where a woman has been insured before marriage, she will, unless she continues to be employed within the meaning of the

[1] Ss. 6 (2) and 10 (1). [2] S. 49. [3] S. 45 (1).
[4] *Ib.* (4). [5] *Ib.* (3).

Act, be suspended from the ordinary benefits, *i.e.*, both Minimum and Additional Benefits, until the death of her husband; the dissolution of the marriage, or the expiration of two years' separation from, or desertion by her husband, are to be taken as equivalent to his death.[1] If she is a member of an approved society, her transfer value, *i.e.*, the liability of the society towards her at that time, will then be ascertained according to tables to be prepared by the Insurance Commissioners, and one-third of it will be carried to a separate account, called the "Married Women's Suspense Account," for her benefit in the event of widowhood. She will then be entitled to an option, which must be explained to her by her society.[2] She may become a voluntary contributor at the special reduced rate of 3*d.* a week, for which she will receive medical benefit, sick pay of 5*s.* a week for 13 weeks, and 3*s.* a week afterwards, but not maternity benefit, or sick pay during the four weeks after confinement.[3] The State contribution towards those benefits will be one-fourth of their cost, equivalent to one penny a week:[4] the two-thirds of her transfer value, not carried to the separate account, will be available to assist her society in paying these benefits. Alternatively, she may pay no further contributions, in which case that two-thirds of her transfer value, subject, if she had a reserve value, to some deduction in respect of it, will be used until it is exhausted in the payment to her of 5*s.* a week for not more than four weeks after any confinement, or of a sum in the discretion of the society during any period of sickness or distress:[5] it is not clear whether the State will also contribute one-fourth of the cost of these payments. In either case, if before the death of her husband she again becomes employed, she will again be entitled to ordinary benefits, but they may be liable to reduction in the same way as if she had not been insured before.[6]

If a woman is a deposit contributor at the date of her marriage, the sum then standing to her credit will be used in the same way as the transfer value of a member of an approved society, two-thirds of it being devoted during her marriage to the same

[1] S. 44 (1) and I (14).
[2] *Ib.* (11).
[3] *Ib.* (2) and the Fourth Schedule, Part I, Table D
[4] S. 3.
[5] S. 44 (2) and the Fourth Schedule, Part III.
[6] *Ib.* (1) proviso, and s. 9 (4).

purposes as in the case of a member of an approved society who does not elect to become a voluntary contributor.[1]

On the death of her husband, a widow who belongs to an approved society will again have a choice before her, which she must exercise within one month: she may continue as a voluntary contributor at the same reduced rate as during marriage, or if otherwise qualified to do so become an ordinary voluntary contributor at the rate which she would have paid if she had begun when she first entered insurance[2]; if at any time after his death she becomes an employed contributor, the whole period between her marriage and the expiration of one month from his death will be disregarded for the purpose of arrears.[3] She will be entitled to a reserve value, appropriate to her age at that time, to be paid out of the "Married Women's Suspense Account,"[4] or, if a deposit contributor, she will then be able to draw upon the one-third of her credit at the date of marriage which was then held in suspense. In fact, in any case, arrears which accrue during marriage will be disregarded at the death of the husband.[5] A woman who is married at the commencement of the Act, if at any time before, or within one year after, the death of her husband she becomes an employed contributor, and a member of an approved society, will be entitled to full benefits notwithstanding her age.[6]

Special provisions are also made for men in the Army and Navy and seamen in the Merchant Service by Sections 36 and 38 of the Act.

We have dealt so far with the case of men and women not previously insured. In their own interests it is essential that they should enter approved societies, and to enable societies to accept them without any loss on account of their age a grant is made to the society in respect of each such person equal to the amount of the liability which it undertakes in accepting him.[7] The grant rises from nothing for a boy of sixteen to a very considerable sum for a middle aged man. Precisely the same grant is paid in respect of insured persons who are already members of Friendly Societies and Trade Unions as if they were newly entering the society, with the result that large sums belonging to the society

[1] *Ib.* (4) and the Fourth Schedule, Part III.
[2] *Ib.* (3).
[3] *Ib.* (1).
[4] *Ib.* (3).
[5] *Ib.* (6).
[6] *Ib.* (5).
[7] S. 55 (2).

and reserved for the purpose of paying benefits to their older members are set free. These sums each friendly society must use for its existing members and for them only;[1] so that existing friendly society members of long standing will necessarily receive larger benefits than those persons who come into insurance for the first time. They will in fact receive (even if they entirely discontinue their subscriptions to the society) not only their State benefits but something in addition representing the accumulated value of their past contributions. On the other hand, if they continue to contribute directly to their societies, reducing their subscription by the 4*d.* deducted for the State Scheme and which is ultimately paid over to the society, they will receive all the benefits for which they have hitherto subscribed, together with such things as maternity and sanatorium benefits, which were not included in their subscriptions, and over and above that, a substantial increase in sick pay, superannuation allowance or some other benefit representing the value of the employer's contributions and the reserve value credited to the society in respect of them. Friendly Societies have power under Section 72 to reduce the contributions to their members who become "insured persons" so that they will pay no more under the Act than they did before, and solvent societies will be in a position to make this reduction while actually increasing the benefits offered.

Part II

The Unemployment Scheme.

Part II of the National Insurance Act applies only to workers in insured trades; and, by Section 107, to discover the trade in which the workman is employed regard must be had to the work he does rather than to the business of his employer. Broadly speaking, bricklayers, carpenters, most joiners, painters, plasterers, paper-hangers, all men engaged in making or repairing machinery or in operating machine tools, such as, turners, fitters, brass finishers and the operators of drilling, planing, and other similar machines; all men engaged in ship building, in making embankments, canals and other permanent works, that is to say, navvies

Insured trades.

[1] S. 72.

generally, and platelayers, iron founders, sawyers, carriage builders, all these, and labourers working with them, come under the operation of Part II of this Act as being workers in "insured trades."[1] But to come under the scheme of Unemployment Insurance a man must not only be in an insured trade but he must be a workman; that is to say, a person engaged in manual labour and working under a contract of service.[2] It is at least doubtful whether an apprentice is included if not indentured.

Contributions.

Workmen in insured trades must pay not only the contribution of fourpence required under Part I, but a further contribution of 2½*d.* for unemployment insurance. In addition, the employer pays 2½*d.*, the State contributes 1½*d.* and undertakes to manage the scheme through the Board of Trade at a cost not exceeding the odd two-thirds of a penny.[3] So that for every 2½*d.* contributed, there is 6*d.* actually available for unemployment benefit. It is probably fair to say that, allowing for expenses of management, the workman gets for his 2½*d.* an insurance against unemployment, which it would cost a trade union 6½*d.* to give.

Refunds of contributions.

It is of course conceivable that a workman will never personally draw any benefit from the unemployment fund; he may never be unemployed, and in such a case he is allowed, on reaching the age of sixty, to withdraw his own part of the contributions that have been paid in respect of him, with 2½ per cent. interest.[4] If he has drawn benefit less than the amount of those contributions, then he draws the balance and interest thereon. But he must have paid at least five-hundred contributions; *i.e.*, he must have been contributing for nearly ten years in order to take advantage of this provision of endowment for his old age. Workmen should clearly understand that, if they are continuing at work after passing the age of sixty, it is by no means to their advantage to draw these contributions, since the amount drawn is deducted from the sums standing to their credit in the unemployment fund: that is to say, every 2½*d.* drawn out, reduces by three-eighths the number of full contributions standing to the workman's credit, and his right to benefit if he thereafter becomes unemployed is limited to one week's benefit for every five contributions still remaining. It follows that a man who withdraws his own contributions for twenty-four weeks, amounting to 8*s.* 4*d.* in all, loses thereby the right to benefit to the extent of 21*s*

[1] See Sixth Schedule and notes thereto.
[2] See s. 107 and note thereto.
[3] See s. 89 (2).
[4] S. 95.

should he be thereafter unemployed. Now, since the workman can draw the money at any time after passing the age of sixty, and since his representatives can draw it after his death if he was then above that age, it is obviously wise for him to let the money remain in the unemployment fund, at least so long as he continues to follow an insured trade, so as to be qualified for unemployment benefit, and to claim it only when he has left the trade, and has indeed left it so long as to disqualify him from benefit; *i.e.*, for 4½ years.[1]

Persons already insured.

This contribution of 2½*d.* is not a new or additional burden upon workmen who are already insured through a trade union against unemployment. Trade unions have themselves the opportunity of administering the unemployment part of the insurance scheme. They can pay the benefits which they are already giving, recovering for their funds the 7/- which the workmen would receive out of the unemployment fund, and they can in exchange allow the workman to reduce his trade union subscription by the 2½*d.* which he contributes through his employer to the State Scheme.

As the 7/- a week is worth, not 2½*d.*, but about 6½*d.* in contributions, it is clear that though the workman pays no more the trade union gains enormously and will be in a position to grant in return for a subscription reduced by 2½*d.* very much higher unemployment benefits than it pays at present.

Liability of workmen.

There are, however, two differences between the liabilities of workmen for contributions under Part I and under Part II of the Act. Under Part I, the workman is not liable himself; the employer is the only person responsible for paying both contributions, and if the employer fails to pay his contribution the workman can take action against him, claiming all the benefits that he himself has lost through the employer's fault. Under Part II, on the other hand, the workman is himself liable for his own 2½*d.*[2] It is true that the employer must, in the first instance, pay both contributions, but it is the business of the workman to ensure as far as possible that they are paid, and he cannot sue the employer for lost benefits, as he is himself taken to be in part to blame for non payment.

Short employments.

Again, a workman who is employed for one day in the week is not liable to pay or to have deducted the whole of his week's contribution, but only one penny for the day or twopence

[1] S. 86 (1). [2] S. 85 (2).

for a job lasting two days, and the employer has to make the same payment of a penny or twopence for himself. Further, every employer in the week must make the payment, so that if a workman travels from job to job and does a day's work at each, the whole contribution that will have been paid in respect of him in the course of the week will be one shilling—a penny a day by the different masters and a penny a day by himself. As will be explained later, he gets the full benefit of the shilling, as each of these contributions of a penny are counted as two-fifths of a week's contribution, and the workman is therefore credited with 2 fifths contributions in respect of that week.[1]

Labour Exchange.

Naturally, however, employers are not likely to be anxious to contribute for their pay twopence a week instead of 2½*d.* in respect of casual men taken on. The position is this: An employer taking John Smith on Monday and Tuesday and being twopence out of pocket by him (since he has paid fourpence and recovered twopence) wants a labourer again on Thursday. If John Smith's services are not available the employer must take on a new man and pay a further full day's contribution making up his expenses to 3*d.*, whereas 2½*d.* would have franked Smith for the week. To meet that case a special provision is made. The employer can arrange with the Labour Exchange to supply to him a man on any day when he is wanted, not necessarily the same man, but each of those shall count as the same man for the purpose of contribution. The employer will pay 2½*d.* a week to the Labour Exchange, and every man obtained by him through the Labour Exchange, providing that he never employs two such men at the same time, will be covered by the contribution. Presumably the Labour Exchange will see to the stamping of the cards in such a case. But where such an arrangement is made naturally the workman is as well treated as the employer. He cannot be asked to pay a penny a day while the employer gets off with 2½*d.* a week. The workman, too, can deposit his insurance card on applying to the Labour Exchange for work and that Exchange will arrange also for his payments, and if the workman's various employers deduct more as unemployment contributions than 2½*d.* a week the balance will be refunded to the workman through the Labour Exchange.[2]

Levies.

It is of course conceivable that in times of bad trade and general distress contributions taken under the Act may be

[1] Eighth Schedule. [2] S. 90.

unequal, even with the help of accumulated reserves and of assistance from the Treasury,[1] to meet the calls made upon it for benefit. In that case, the Board of Trade has power to make a levy, but, unlike the levies with which recent years have made trade union members unfortunately familiar, this is a levy equally upon employer and employed, and limited to a contribution of 1*d.* a week from each. The Board of Trade must give a month's notice of such a levy, which can be made only when the Unemployment Fund has received an advance from the Treasury to meet temporary distress, and must be stopped within three months after the Treasury advance is repaid.[2] All contributions are remitted when a factory goes on short time through bad trade.[3]

Benefits.

Insurance for the purpose of Unemployment Benefit is on a modified deposit system, that is to say, the benefits which the workman can draw are proportionate to the deposits standing to his credit. He is allowed to draw one week's benefit for every five weeks' contributions paid. Having paid 1*s.* 0½*d.* in contributions, which, with the 1*s.* 0½*d.* paid by the employer and 8⅓*d.* paid by Parliament, makes up 2*s.* 9½*d.*, he can draw 7*s.* of benefit. But when he has drawn 7*s.* for every 1*s.* 0½*d.* that he has paid in his right to benefit stops.[4] It is clear therefore that the workman who travels from place to place and pays in, instead of 2½*d.*, sixpence in the week, is not really injured. He is probably a man eminently likely to be unemployed and he can draw a week's benefit in respect of just over a fortnight's work.

Waiting periods.

There are, however, two general restrictions on the right to draw Unemployment Benefit. The first is that benefit is not payable in respect of the first week of unemployment[5] unless that follows within six weeks of a previous week of unemployment.[6] On the other hand, a week counts as a week of unemployment, although in the course of it the workman did two days' work.[7] The second restriction is that no Unemployment Benefit will be paid until after the first six months from the commencement of the Act although contributions will be payable. It is obvious that before undertaking liabilities, some kind of fund must be accumulated to meet the calls. On the other hand, during all this time workmen will be accumulating the right to benefit

[1] S. 95.
[2] S. 95 (2)
[3] S. 96.
[4] Seventh Schedule.
[5] *Ib.*
[6] S. 107.
[7] *Ib.*

and those workmen who have been employed in "insured trades" prior to the passing of the Act will start with a credit of anything up to twenty-five weeks' contributions,[1] according to the time during which they have been so employed. The result is that a workman who has been employed steadily in an "insured trade" for the last three years and who continues in steady employment during six months after the commencement of the Act will start with fifty-nine contributions to the good and will be entitled to draw ten weeks' benefit during the second six months after the Act passes if he is unemployed for eleven weeks during that time. If not, he will carry the balance of the contributions to his credit for the future.

What is unemployment?

The principal qualification for benefit is that a workman is capable of work but is unable to obtain suitable employment.[2] If he is incapable of work through disease or disablement he gets benefits under the sickness insurance scheme, which are generally larger benefits than those given for unemployment. But he must show that he is unable to obtain suitable employment, and the method by which that is shown is very simple. He must report himself at a place appointed by the Board of Trade[3] and the place appointed will presumably be the Local Labour Exchange. The officer in charge has two alternatives: the first is, to offer him suitable employment if any is to be had; the second, to enter him as unemployed, and the period of unemployment begins when he is entered accordingly. One week of unemployment must run before any benefit begins to accrue, so that the workman's duty is to apply to the Labour Exchange as soon as he is unemployed and without waiting until he qualifies for the benefit. He can get no benefit until at least a week and a day have elapsed after he has made application. But if suitable employment is offered he must take that employment, and he cannot qualify for benefit if he refuses. Naturally a difference of opinion may arise between himself and the Labour Exchange authorities as to whether or no the employment is suitable, and if they do differ then the workman's claim goes to a Court of Referees,[4] half of whom are themselves workmen's representatives and the other half representatives of employers, the President being an officer appointed by the Board of Trade.[5] Whether the employment is or is not suitable is a question of fact for the

[1] Seventh Schedule. [2] S. 86. [3] S. 86.
[4] S. 88. [5] S. 90.

referees; the workman appeals from the Insurance Officer to them, and if they agree with the Insurance Officer their decision is final; if not, the Insurance Officer can again appeal to the umpire; but probably appeals to the umpire will only be encouraged or allowed when some question of principle is involved. The referees are the proper persons to decide facts, and the real function of the umpire, to whom appeals are made from all the different Courts of Referees in the kingdom, is simply to ensure that these various Courts act upon the same principles and have, broadly speaking, the same standards of suitability of employment.

Trade disputes.

There are however certain employments which a workman has a statutory right to refuse. He may, for instance, decline to accept employment at lower wages or on less favourable conditions than his usual employment, although there is a special provision that a workman found by test to be incompetent may be required to accept some less skilled employment.[1] The actual working of the latter provision is likely to be extremely difficult and possibly it may be little more than a dead letter.

Again, a workman cannot be sent to another district to be employed at less than the customary rate of wages in that district for his trade. It must not however be assumed that if the rate of wages offered him in a strange district is the customary one he is therefore bound to accept it. The question as to whether the employment is suitable, involving perhaps his absence from home, is still one for the referees to decide.

But the most important provision is that a workman cannot be compelled to accept a vacancy which is due to a trade dispute. The Unemployment Fund must not be made an instrument for strike-breaking or for the supply of "blackleg" labour. On the other hand, the fund cannot be used to subsidise strikes. It is built up from the contributions both of employers and of employed and ought not to be used to serve the partisan interests of either. The workman who is on strike, or who is unemployed in consequence of a trade dispute in his own factory, is not entitled to benefit.

Trade union funds.

It is however only fair to point out that the expenses of the management fund will greatly strengthen the hands of trade unions in trade disputes. At the present time, unions have for the most part a common fund, which is used for general management, for the provision of strike pay and also, in many cases, for

[1] S. 100 (1).

sick pay, unemployment benefit and sometimes burial money, the general fund of the union is, therefore, in many cases liable morally, though not legally, to the members of the union for sick pay and for unemployment benefit. These liabilities are undertaken by the State, which provides new reserve values[1] for the purpose of giving sick pay and so relieves the funds of a trade union which becomes an approved society from the liabilities for sick pay which it at present bears, and accordingly sets free a part of those funds for strike pay and trade disputes. But the relief experienced by trade unions in respect of unemployed benefit is a much more substantial matter. As has been pointed out, a contribution of 6*d* or 6½*d* to a trade union is required to provide the unemployment benefits given under the Act. If therefore a trade union reduces its contributions by 2½*d* (which it can do under Section 105 (2) of the Act) and at the same time either reduces its unemployment benefit by the 7/ provided under the Government Scheme, or continues to pay its benefits in full and accepts the 7/ subsidy offered in that case out of the unemployment fund,[2] it gains either way by the value of a weekly contribution of 4*d*; so that with no additional cost to its members its general fund is better off by some 3*d* a week per member, and that sum is available for the militant purposes of the union. The gain to trade union membership which is likely to arise from the removal of the fear of levies is also no inconsiderable matter. The maximum levy under the Act is one penny a week. The levies that have actually been raised in recent years from trade union members for the purpose of paying unemployment benefit have, in some cases, risen as high as 2/6 weekly from each member.

Trades not insured

The Board of Trade has power by special order to extend the operation of the Act within certain limits to other trades than those mentioned in the Sixth Schedule,[3] but even without any such extension the Act offers some benefit to workmen in trades to which it does not otherwise apply. The Act empowers the Board of Trade to offer a subsidy, not out of the unemployment fund but out of moneys provided by Parliament, up to one-sixth of the unemployed benefits paid by trade unions to workmen in trades not insured, and trade unions in insured trades may likewise be permitted to recover one-sixth of the excess of the unemployed benefits which they pay, over the moneys repaid to them out of

[1] S. 55 (2). [2] S. 105. [3] S. 103.

the unemployment fund, excluding in each case so much of the trade union's own benefit as exceeds 12*s.* a week. It may be noted that one quarter of the unemployment fund is contributed from taxes; but assuming that one-tenth of the whole contributions, or two-thirds of a penny per week, is deducted by the Board of Trade for the cost of management, then out of each 6*d.* available for benefits one penny, or one-sixth of the whole, represents the Parliamentary contribution. The same proportion of one-sixth is made available for voluntary agencies who do at their own cost the work done by the Board of Trade for selected industries; so as to give to every industry a proportionate claim upon the taxpayer.

CHAPTER III

ADMINISTRATION

PART I

The Insurance Commissioners

Insurance Commissioners.

THE administration of the sickness insurance scheme is entrusted to two classes of bodies: Insurance Committees and Approved Societies, which will carry on their operations side by side throughout the country. The whole is supervised and directed by a body of Insurance Commissioners appointed for each of the four constituent parts of the United Kingdom. The work of these four sets of Insurance Commissioners is co-ordinated by a Joint Committee under a chairman, who may be a member of the House of Commons, for the purpose of answering in that House questions relating to the procedure of the Commissioners. The first chairman is the present Under-Secretary to the Home Office. The whole of the four bodies of Insurance Commissioners are appointed by the Treasury, and their procedure, expenditure, and the number of their officers are to be subject to the approval of the Treasury. The constitution, powers and duties of the Joint Committee are to be settled by regulations to be made by the Treasury.

Each body of Commissioners will have under their control a separate Health Insurance Fund for the country which they represent. It will be the duty of the Joint Committee to make such financial adjustments as may be necessary between the several funds.[1] The powers of the several bodies of Insurance Commissioners are necessarily extremely wide. A very great number of questions are left to be determined by them by means of regulations. They have power by special order made after publication and after inquiry, if necessary, to vary very consider

[1] S. 83.

ably, the classes of persons who will be brought by the Act into compulsory insurance. In some cases they may, by mere certificate and without the more formal procedure of the special order, exempt certain classes from the compulsory provisions.[1] In other cases, they may determine and vary the rates of contribution to be paid by various classes of insured persons and their employers.[2] It will be their duty to bring into being, and by regulation to settle the procedure and to a certain extent the duties of the Insurance Committees, which are to have a large share in the administration of the scheme in each locality.[3]

They are also to approve the societies which will be permitted to administer the benefits of the Act for their members.[4] They are the authority subject to whose satisfaction arrangements must be made throughout the country for medical treatment.[5] They are the arbiters, and in some cases, the final arbiters, in all questions and disputes which may arise in the operation of the Act.[6] For the purpose of bringing the Act into force they may by mere order make any appointment and do anything which appears to them necessary or expedient, and may modify the provisions of the Act so far as necessary for the purpose.[7] This power, however, is not to be exercised after the 1st January, 1914, and is subject at all times to the consent of the Treasury.

Compulsory powers.

The task of enforcing the provisions of the Act, especially the provision throwing upon employers the duty of paying contributions in respect of every employed contributor, is imposed upon the Commissioners.[8] For this purpose they have power to take summary proceedings against any employer who fails or neglects to pay, and who thereby becomes subject to a £10 fine in respect of each offence, in addition to the payment of the whole amount of contributions due.[9] To enable them to carry out this duty, the Commissioners may appoint Inspectors, who will have power to enter any premises other than private dwelling houses not used as workshops, where they have reasonable grounds for supposing that workmen who are or ought to be insured are employed, and to make such inquiries and examinations as may be necessary.[10]

Actuarial tables.

The Treasury is however entrusted with a large control of the financial scheme. It will appoint and pay auditors, to whom the

[1] S. 1 (2) and the First Schedule, Part II.
[2] Ss. 5 (1), 50, 60 (1). [3] S. 15. [5] Ss. 57, 65.
[7] S. 59. [6] S. 67. [9] S. 69.
[4] S. 23. [7] S. 78. [10] Ss. 57, 112.

accounts of all Approved Societies and Insurance Committees must periodically be submitted.[1] It will also appoint and pay valuers, who will value the assets and liabilities of all Approved Societies at intervals of three years, or at any other times that the Commissioners may appoint.[2] For the purpose of these financial duties, the Commissioners will have to prepare tables on which all calculations in the working of the Act will be based.[3] They are to fix the rates of contributions for voluntary contributors.[4] They are to determine the average expectation of sickness for the purpose of valuation tables, which are also to be used in case of claim against any person or authority for excessive sickness due to his default.[5] Most important of all, they are to prepare tables showing the reserve values required in order to make good to a society the loss due to accepting members over the age of sixteen.[6] These are a few examples of the very wide powers and the very onerous duties which are imposed by the Act upon these four bodies of Commissioners.[7] As has already been pointed out, they will be exercised by each body separately, subject to the co-ordination of the Joint Committee. This means that the tables, for instance, may well be different in the four countries owing to the differences of population, mode of life, and other matters which affect the expectation of sickness. Each body of Insurance Commissioners is to contain at least one member who is a duly qualified medical practitioner who has had personal experience of general practice.[8] The Commissioners for England are to appoint an Advisory Committee consisting of representatives of Associations of Employers, Approved Societies, duly qualified medical practitioners who have personal experience of general practice, and any other persons whom they think fit, of whom two at least shall be women.[9] The duty of this Committee will be to assist the Commissioners in connection with the making and alteration of regulations.

Part II.

Insurance Committees.

For the local administration of the Act there is to be appointed in every county or county borough an Insurance Committee.

[1] S. 35 (1).
[2] S. 36 (1).
[3] S. 36 (2).
[4] S. 5 (1).
[5] S. 63 (4).
[6] S. 55 (1).
[7] For a full list see note to S. 65.
[8] Ss. 57, 80, 81, 82.
[9] Ss. 58, 80, 81, 82.

The number and method of appointment are largely to be settled by the Commissioners, but each Committee is to contain not less than forty nor more than eighty members; three-fifths of the whole number are to be representatives of the insured persons resident in the county or county borough, drawn partly from approved societies, partly from deposit contributors, in proportion to their respective numbers.[1] The approved societies are to appoint their own representatives, and if the deposit contributors in the district have formed an association, that association will appoint the representatives of those contributors; if not, they will be appointed by the Insurance Commissioners. One-fifth of the whole number will be appointed by the council of the county or county borough, of whom two at least shall be women. In addition, that council is to appoint one duly qualified medical practitioner, or if the total number of the Committee exceeds sixty, then two, or if it exceeds eighty, then three. The medical practitioners of the districts will further have the right themselves through an association they will have formed of electing two members of the Committee; the Insurance Commissioners will appoint the remainder, of whom again at least one must be a duly qualified medical practitioner, and two must be women. If the council of the county or county borough takes upon itself the responsibility of contributing towards the cost of medical or sanatorium benefit its representation will be increased at the expense of that of the insured persons.[2] The Committee of every County within six months of the commencement of the Act is to appoint in accordance with a scheme to be approved by the Commissioners, District Insurance Committees for the areas or some of the areas comprised in the county, and in particular, for every municipal borough with a population of not less than ten thousand, and every urban district with not less than twenty thousand, parts of the adjoining area being if necessary grouped with the boroughs and urban districts. In the County of London there must be District Committees for the City and for every metropolitan borough.

Powers and duties.

The powers and duties of the Insurance Committees are very wide. They are in the first place to be responsible for the entire arrangement and control of medical benefit for the whole of the insured persons, whether members of approved societies or not, resident in their area, and for any members of a society which

[1] S. 59 (1), (2). [2] S. 59 (3).

becomes "approved," who were members before the passing of the Act, and are disqualified by age or incapacity for work, from becoming insured persons. For this purpose, they must make arrangements to the satisfaction of the Insurance Commissioners with a sufficient number of duly qualified medical practitioners, to ensure to all those persons adequate medical treatment and attendance, or must take such other steps as may be necessary for the purpose; and they must provide for the supply of proper and sufficient drugs and medicines, and such appliances as the Insurance Commissioners may prescribe. In each case they will be required to prepare and publish lists of medical practitioners and chemists, who are willing to undertake the work at the scale of charges authorised by the Committee and approved by the Commissioners, on which list any duly qualified person is to be entitled to have his name included. Except with the consent of the Insurance Commissioners, the arrangement for the supply of drugs and medicines must not be made with medical practitioners.[1]

Secondly, the Committee must make the entire arrangements for the provision of sanatorium benefit for all insured persons resident in their area.[2] The Committee however has no power itself to erect or control sanatoria or other institutions. That power rests with the existing local authorities, amongst whom the grant provided by the Finance Act, 1911, is to be distributed by the Local Government Board.[3] The duty of the Insurance Committee is merely to enter into arrangements satisfactory to the Insurance Commissioners for the treatment of insured persons in sanatoria, when erected by those authorities, or by private persons and institutions. They are also to enter into similar arrangements for the purpose of treatment in the nature of sanatorium benefit, but not institutional. The right of any person to sanatorium benefit will depend entirely upon the decision of the Committee itself, and they may pay or advance money for the conveyance of an insured person to or from the sanatorium.[4] Moreover, they have power, if funds permit, to extend sanatorium benefit to the dependants of insured persons although those dependants are not themselves insured.

Deposit contributors.

Benefits other than these two, the Insurance Committee will administer only for the deposit contributors within their area, approved societies having the exclusive administration of them for

[1] S. 15. [2] S. 16. [3] S. 64. [4] S. 16 (1).

their own members. In each district, those who do not join an "approved society" within a time to be fixed by the Insurance Commissioners, or who, having been members of such a society, have left it and have not within a similar time joined another, are to become deposit contributors, of whose benefits the Insurance Committee will have control.[1] It will be the duty of the Committee to deduct from the fund standing to the credit of each deposit contributor at the beginning of each year the sums required for medical and sanatorium benefits and for administration; if the credit is insufficient for the purpose, the Committee must decide whether the contributor is to be entitled to any benefits during that year, the balance remaining, if any, being available for the payment of other benefits that have become due so long as that balance lasts. The Committee are to make rules similar to those of approved societies, and subject to the approval of the Insurance Commissioners, regulating the conditions as to notice, visiting, behaviour, etc., governing the right to benefits of deposit contributors. They may also exercise the same powers as approved societies with regard to making claims against employers or other persons for recovering the compensation or damages to which they may consider that any deposit contributor under their control is entitled in respect of any injury or disease.[2] When the balance is exhausted, the right to medical and sanatorium benefit will continue until the end of the year for which it has been paid, and it will be for the Insurance Committee to determine whether both or either of those benefits shall extend beyond that time.[3] If a deposit contributor dies or permanently leaves the United Kingdom the Insurance Committee are to pay to him, or in case of death to his nominee or next of kin, that proportion of the amount standing to his credit which represents (in the case of an employed contributor) his own personal payments.[4]

Grouped societies.

The only concern of the Insurance Committees with the administration of approved societies arises in connection with societies having less than five thousand members. Such societies, unless they join a voluntary association large enough to bring the total membership over five thousand, are to be grouped together for the purposes of valuation, surpluses and deficiencies, with other societies in the same county or county borough.[5] The Insurance Committee is to manage for the above-mentioned

[1] S. 42. [2] S. 11. [3] S. 42 (*b*). [4] S. 42 (*g*). [5] S. 39.

purposes only the affairs of the grouped societies within its area. The societies with surpluses are to pay one-third of their surpluses into the common fund, out of which the Insurance Committee must make good three-fourths and may make good the whole of any deficiency which has occurred in other societies. For this purpose a Committee is to have power to determine whether the deficiency is due to mal-administration by the society in question, and in such case to refuse to make it good.[1] Any balance remaining of the common fund is to be divided amongst the societies which have surpluses in proportion to their contributions to the fund.

Only at periods of valuation, and even then only to the extent explained above, will the Insurance Committees have any right to interfere with the administration of societies.

Finance. The finances of the Committee will be derived from a number of sources. With regard to the deposit contributors, of course, the entire fund will be under their control, and the Insurance Commissioners will prescribe what proportion the Committee may require from each deposit contributor, for the expenses of administration.[2] Approved societies are required to contribute to the expenses of the Insurance Committee, 1*d.* per annum for every member resident in their area, or if the Insurance Commissioners consider that the travelling expenses of the Committee should be paid, they may increase the contribution of approved societies up to 2*d.* per member.[3] The Committee will also obtain a small contribution from approved societies, who are required to pay to the Committee the sickness or disablement benefit due to any of their members, who, having no dependants, are inmates of a sanatorium.[4] Any local authority is entitled, if it wishes, to subscribe out of the funds or rates under its control, any sum towards the general expenses of an Insurance Committee.[5]

For the expenses of medical benefit, the Committee is to be paid in respect of each insured person resident in their area such sum as the Insurance Commissioners in default of agreement may prescribe.[6] In the case of an approved society member, the sum will of course be paid out of funds belonging to the society.

For the expenses of sanatorium benefit, the Committee will

[1] Ss. 38 (1) (*a*), 39 (4). [2] S. 61 (2). [3] S. 61 (3).
[4] S. 42 (*c*). [4] S. 12 (2) (*b*). [6] Ss. 15 (6), 61 (1).

have the sum of 1*s.* 3*d.* per member per annum, paid to them direct, out of the National Health Insurance Fund, which is under the control of the Insurance Commissioners, and in addition, the sum of 1*d.* per member per annum, payable by the Treasury; but this latter sum may be intercepted by the Insurance Commissioners for the purpose of research. In the case of both of these benefits,[1] if the Committee find that the sums at their disposal are insufficient for the purpose, they may transmit through the Insurance Commissioners to the Treasury, and to the Council of the county or county borough, an account showing the estimated expenditure and deficit.[2] If both these bodies sanction the expenditure, they will be liable to make good the deficit in equal proportions,[3] but unless both bodies consent, the Act does not empower either of them to make any contribution, and the Committee will in that case be obliged to meet the situation by a revised estimate curtailing the expenditure.

General powers.

In addition to their duties in connection with the administration of benefits, there are certain matters of a general character which the Insurance Committees will have to undertake. They are to collect information and statistics of health with regard to the insured persons in their area, for which purpose they may obtain the assistance of medical officers of health, and to make reports and returns for the information of the Insurance Commissioners with the approval of the Local Government Board; and these reports when made are to be forwarded to the councils of the counties, boroughs, urban or rural districts affected by them. They must, in particular, collect information with a view to the analysis and classification of the deposit contributors in their area.[4] In addition to collecting information, they are also to disseminate it by means of lectures and publications, for which purpose they may make arrangements with local and other educational authorities. It is anticipated that in this way, without overlapping or interfering with the duties at present carried on by existing local authorities, the work of the Insurance Committees may lead in a large measure to the prevention as well as the cure of disease.

[1] S. 16 (2).
[2] Ss. 15 (7), 17 (2).
[3] Ss. 15 (8), 17 (3).
[4] S. 60 (1).

Part III.

Approved Societies.[1]

The administration of benefits other than medical and sanatorium benefits will fall principally upon societies, which when they have obtained the approval of the Insurance Commissioners will be called "approved societies." Not only existing members of friendly societies, trade unions and similar bodies, but also the vast majority of those persons, who, not being at present members of such societies are to become insured under the scheme, will have every inducement to join approved societies for the administration of their benefits; for a member of an approved society, subject to the possibility of his society by mismanagement or otherwise falling into deficiency has the payments of his benefits, including disablement benefit for a period limited only by his attaining the age of seventy, absolutely guaranteed. The deposit contributor, as already explained, can only draw sickness, disablement and maternity benefit while there is something standing to his credit. The approved society member, moreover, has an advantage over the deposit contributor in the right to share in any surplus which his society or branch may make. It may therefore be confidently anticipated that as soon as those benefits are understood, there will be a great rush on the part of insured persons to join such existing or new societies as may obtain the approval of the Commissioners.

In order to obtain this approval, a society must not be carried on for profit; its affairs, including the election of a committee of management, must be subject to the absolute control of its members; and in particular, honorary members, though they may have the right of taking part as officers or committee-men in the management, must have no right of voting on any questions arising under the Act. But although a society must comply with these conditions in order to gain approval, a society or company which does not comply with them may for the purpose of carrying on business under the Act establish a separate section of its own, which for the purpose of the Act will be treated as the "society." It is not necessary that either the parent society or the separate section should be registered, but if it is not, its constitution must be such as may be prescribed by the Insurance

[1] As to the financial arrangements of approved societies, see Chapter VI.

Commissioners.[1] In order to qualify for approval under the Act, any society or company may immediately, notwithstanding anything in the Act under which it is established, registered, or carried on, or in its Memorandum or Articles of Association or Rules, do anything, including the establishment of a separate section, which may be necessary to enable it to transact business under the Act, and in particular any provision in the instrument regulating the constitution of the body which requires any interval to elapse before action can be taken shall not apply to action taken for the purpose of this Act.[2] Employers' superannuation funds may also qualify as approved societies, provided the membership is not compulsory, and that members who leave the employer have the option of remaining members of the society or transferring to another ; but the employer may be entitled to representation not exceeding one quarter on the committee of management, if he is liable for the solvency of the fund or for a substantial contribution to its benefits in addition to his ordinary liability for contributions under the Act.[3]

The Commissioners may make their approval conditional upon the society taking within a limited time such steps as they may require to comply with the Act, and even where approval has been granted unconditionally it may be withdrawn if the society fails to comply with any of the provisions of the Act, or if it, or its parent society, is convicted of an offence under this or any other Act.[4] Subject to the condition that its affairs must be under the absolute control of its members, the Commissioners will make as little interference as may be with the government and constitution of societies seeking approval, and in particular, the right is reserved to them to admit or reject any application for membership on any ground whatever, excepting that of his age,[5] the liability or loss due to the acceptance of aged members being met by the reserve value which will be credited to the society under the Act.[6]

Organisation.

The organisation of the society may be centralised, or it may be constituted of branches, and those branches may be grouped, as is often done at present, into districts. No branch will be recognised as such unless separately registered under Section 19 of the Friendly Societies Act, 1896.[7] Branches not

[1] S. 23.
[2] S. 24.
[3] S. 25.
[4] S. 23 (3).
[5] S. 30 (2).
[6] S. 55 (2).
[7] S. 79.

so registered will be treated as part of a centralised society. The districts may, if the number of members exceeds five thousand, and they are otherwise qualified for approval, be treated as separate societies. This will no doubt be found most convenient in the case of societies having districts in more than one of the four constituent parts of the United Kingdom. Where, however, a society not being organised in this way, has members in more than one of these countries, the Act provides that for the purpose of valuations, surpluses, deficiencies and transfers, the members resident in each part shall be treated as a separate society.[1] The society must provide by rules to the satisfaction of the Insurance Commissioners for its government, and, where it is organised by branches, for the government of those branches and the determination of disputes arising between them; it must also provide for the administration of benefits by the branches and for the proper keeping of accounts,[2] and may apply its existing rules or make new rules with the consent of the Insurance Commissioners with regard to the payment and suspension of benefits, notices and proof of disease or disablement, behaviour of members during disease or disablement, visiting of such members, and with regard to fines and other penalties; but no fine greater than 10*s.*, or, in the case of a repeated offence, 20*s.*, and no suspension of benefits for longer than one year can be imposed by any such rule.[3] No member may be deprived of maternity benefit in respect of his wife for any breach of rule to which she was not a party, nor may any member be penalised for refusal to undergo a serious surgical operation or any kind of inoculation. The rules must provide that female members shall be visited during illness only by women. A society may deprive of sickness and disablement benefit, but not of medical benefit, any member whose illness has been caused by his own misconduct.

Security. Every society which undertakes the administration of benefits under this Act must give such security in such form as the Insurance Commissioners may require to provide against misappropriation by officers of the society of funds given into their hands under the Act, including security, if the society has branches, in respect of each branch; but no security will be required if the society or branch meets current expenditure out of other funds at its disposal, and only draws upon the Insurance Commissioners to reimburse itself for money already spent.[4]

[1] S. 83. [2] S. 27. [3] S. 14 (2). [4] S. 26 (1).

Every society must also keep its accounts in a form approved by the Insurance Commissioners, and entirely separate from its accounts relating to business independent of this Act.[1] It must, moreover, keep a separate account for administration or management expenses, the amount of which is to be limited by regulations of the Commissioners, and any deficiency in which, unless supplied by funds of the society apart from the Act, must be met by an immediate special levy.[2]

Valuation.

It must submit its accounts whenever required to auditors to be appointed and paid by the Treasury; it must also submit triennially,[3] or at other intervals, to a valuation by valuers also to be appointed and paid by the Treasury.[3] Each branch will be valued separately; any members who are not connected with any branch being treated as a separate branch. If the branch shows a disposable surplus, one-third of this surplus will be paid into a central fund of the society.[4] Out of this fund, a central committee of the society will make good to the extent of three-fourths, or if they think fit, the whole, the deficiencies that may have been incurred by any other branch or branches, subject to their right if they consider that the deficiency is due to maladministration, to refuse to make it good.[5] The balance of this fund, including any surplus in the central funds of the society, will be distributed among the branches which contributed to it in proportion to their surpluses. The branch, or in the case of a society without branches, the society, having a surplus to dispose of, may then proceed to prepare a scheme for disposing of it by the payment of any of the additional benefits mentioned in Part II of the Fourth Schedule.

Small societies.

There are similar provisions with regard to societies with less than five thousand members. If they form a voluntary association the valuation will proceed as above described, the Central Financial Committee of that association playing the same part as the committee of management of a society with branches, the small societies themselves being treated as branches of the association.[6] Where they do not join such an association they will be grouped together as already described.[7] If after this process any society or branch still shows a deficiency, that deficiency must be met by a scheme to be prepared by the society or by the branch, subject to the approval of the society,

[1] S. 35 (1). [2] S. 35 (2). [3] S. 36. [4] S. 37. [5] S. 38. [6] S. 39. [7] P. 41.

and submitted to the Insurance Commissioners. The scheme must provide for making good the deficiency within a period of three years in one of a number of ways, by reduction of the amount or period of sickness benefit or by a compulsory levy The latter may if the rules so provide be enforced by notice to the employers of the respective members requiring them to deduct the contributions from wages in the same manner as they deduct ordinary contributions. Failing the preparation and enforcement of such a scheme, the Insurance Commissioners may themselves take over the management of the society or branch and continue it until the deficiency is wiped out.[1]

The actuarial estimates which were prepared while the Act was passing through the House of Commons show that any society which is at all efficiently managed and not subject to any quite exceptional misfortune should be able to show a surplus at each succeeding valuation. Out of each weekly contribution a margin of almost exactly one halfpenny is kept in hand. Moreover, the expectation of sickness estimated is very considerably greater than that on which the tables of most friendly societies are at the present time based, and if the estimated cost of medical benefit is at present an unknown quantity, it must, on the other hand, be remembered that the allowance for administration is one on which every society ought to be able to effect a saving. ·92*d.* per member per week is a very generous allowance for this purpose when it is remembered that the entire cost of the collection of contributions is removed from the shoulders of the society, that the very considerable increase of membership which may be expected cannot bring with it a proportionate increase in the cost of administering the benefits, and that the whole expenses of audit and valuation at present borne by the societies is to be transferred to the Treasury.

Expulsion. A society will retain, not only the right to admit or reject, but also the right to expel any member in accordance with its rules.[2] It may also expel a branch, but only if proper provision is made to the satisfaction of the Insurance Commissioners for any members of the branch who are insured under the Act.[3] The sanction of the Commissioners is also required to the dissolution and secession of a branch, and in the case of secession, their consent will not be given unless the seceding branch is itself qualified to become an approved society, or unless all members

[1] S. 38. [2] S. 30. [3] S. 28.

who are insured persons are transferred to other approved societies or other branches of the same society. A member who wishes, or is obliged to transfer his membership to another society, or to or from the Post Office deposit fund and an approved society is protected by the Act in an entirely novel manner: he will be able to carry with him the sum representing the liability under the Act of the society which he is leaving in respect of him, which will sufficiently compensate any society to which he transfers his membership.[1] The same provision will apply if he leaves the United Kingdom. In that case, he may either take with him his transfer value (or the amount to his credit in the Post Office Fund) into any society or branch in a British possession or foreign country which gives similar privileges to any of its members becoming resident in the United Kingdom.[2] Failing any such society, he may, if he has been a member of his own society for five years or upwards, continue to be a member of it independently of the Act, a similar sum being transferred to its separate fund.[3] Although a member may not be insured twice under the Act, that in no way interferes with his right to be a member for purposes apart from the Act of any number of societies "approved" or otherwise.[4]

Existing members.

Apart from the advantages attached to membership of an approved society generally under the Act, there is a very great advantage which applies to those who were members of such societies before its passing. In order to meet the deficiency which would otherwise arise from societies accepting as members at the ordinary rates of contribution persons over the age of sixteen, the Act provides, as explained elsewhere,[5] that in respect of every insured person over that age who becomes a member of a society there shall be credited to the society a reserve value sufficient to make up this deficiency; but in the case of an insured person who was a member of a society before the passing of the Act, the society will already have created out of his past contributions a reserve sufficient to meet this liability in respect of those benefits which it is now liable to pay. In so far as those benefits are the same as the benefits provided by the Act, that reserve which the society has itself created is no longer required; the Act therefore provides that every friendly society shall submit to the Registrar of Friendly Societies a scheme for continuing, abolishing, reducing or altering the benefits and

[1] Ss. 31, 43. [2] S. 32. [3] S. 33. [4] S. 34. [5] p. 26.

contributions of those members who become insured persons, and if the scheme shows upon an actuarial valuation, as it must do in the case of every society which in the past has built up an adequate reserve, that any part of the existing funds of the society is not required to meet its liabilities, owing to those liabilities, or part of them, being for the future undertaken by the State, the scheme is to provide for the payment to existing members of increased benefits, or for the reduction of their contributions independently of the Act, or for a refund of contributions payable under the Act by those members who elect to receive their benefits under the Act through the Society.[1] The effect will be that any society which is at present insolvent will be made solvent, and any society which is at present solvent, will be able to pay to its members, provided they pay (including their own contribution under the Act) the same contribution as heretofore, considerably increased benefits.

Part IV.

Relation to local government.

It must be apparent that the scheme of the Act touches the existing organisation of our local government at many points. The Insurance Committee, as already explained, will contain a large element of representatives directly appointed by local authorities. Their meetings are to be held, when those local authorities consent, on premises belonging to them. Local authorities are invited, under several heads of expenditure, to contribute to the funds of the Insurance Committees. Administration of sanatorium benefit, in particular, is to be a matter almost entirely of arrangement between these committees and the existing local councils. In the matter of collection and dissemination of knowledge relating to the public health, it is contemplated that the two authorities will act in concert. On the other hand, the powers of the Insurance Committees are so constituted, that those bodies will have no right to undertake work in connection with the Public Health Acts overlapping the duties of the existing sanitary authorities.

Excessive sickness.

But there is one matter in relation to which the two bodies may come into sharp conflict: the Act provides that where the Insurance Commissioners or any approved society or Insurance

[1] S. 72.

Committee find that sickness among insured persons under their charge has been excessive, and that the excess is due to the conditions or nature of their employment, to bad housing or insanitary conditions, to an insufficient or contaminated water supply, or to the neglect by any person or authority to observe or enforce the provisions of any Act relating to these matters, or any other public health precautions, then the Commissioners, society, or committee in question may make a claim against the person or authority alleged to be in default, for the payment of any additional expense due to that cause; failing agreement, an inquiry may be held by a competent person appointed by the Home Secretary or the Local Government Board. If it is proved to his satisfaction that the sickness during a period of not less than three years (except where there has been an outbreak of epidemic, endemic or infectious disease, before the date of the inquiry) has exceeded the average expectation, according to the tables prepared by the Commissioners for the purpose of valuation, by more than 10%, he may order the whole amount of any extra expenditure or cost to be paid by the person or authority in default, or if he finds more than one person or authority responsible, he may divide the cost between them. So far as a local authority at all events is concerned, no order can be made unless the excessive sickness is found to be due to some actual default on its part, and it may cast upon the owner, lessee or occupier of any insanitary premises, the burden of any expenditure for which it can prove that he is responsible.[1] In the event of an order being made against a local authority, the amount may be deducted from any sums becoming due to them from a Local Taxation Account. It is clear that this provision can have terrors only for those local authorities who have neglected the duties imposed upon them by Parliament.

[1] S. 63

CHAPTER IV

THE MEDICAL PROFESSION

PART I

The Present Position

THERE have been few things more surprising to the public in connection with the National Insurance Bill than the unexpectedly threatening attitude assumed by the medical profession. The community had been so accustomed to regard medical men as amiable weaklings in business matters, easily gulled by piteous tales or flattering remarks about the magnanimity of the profession that the idea of what was called a strike of doctors seemed to be rather amusing, and it was only after several months that the public began to realise that the profession was showing itself in a new light and was determined at all costs to insist on certain definite provisions being included in the Bill.

Position of the profession.

It is generally admitted that during the last quarter of a century the position of the general practitioner has been steadily deteriorating. For some years there was an annual increase in the number of newly qualified practitioners out of all proportion to the increase in the population. Many of these were attracted by the rapid growth in the public health medical service, only to find when too late that though a certain number of new posts had to be filled there were far more candidates than posts. The effect too of the public health service was showing itself in the great reduction of cases of serious illness from the notifiable infectious diseases which came into the hands of general practitioners. Formerly nearly all the cases of typhoid, typhus and scarlet fever and diphtheria were attended at home by the family doctor; whereas at present, according to the last annual

report of the Medical Officer of Health for Manchester, to take an example, over seventy per cent. of the cases of typhoid and scarlet fever are removed to isolation hospitals, and medical men who formerly had an income of over £150 a year from the infectious diseases alone now obtain less than £10.

At the same time the increase in the number and size of the voluntary hospitals, both special and general, had a serious effect on general practice. Patients were admitted, often with little or no regard to their financial position, and in spite of the more recent appointments of almoners and the inquiry officers of the Charity Organisation Society there is still a great amount of hospital abuse. Especially is this the case with the out-patient departments, which are crowded daily with cases which are quite unsuitable. There can be no doubt that there is a very general idea among the working classes that a small donation to the Hospital Saturday or Sunday fund entitles them to unlimited hospital treatment, and the hospitals are so short of funds that they hesitate to disabuse the public of this idea, and admit with but little restriction not only the poor but the middle classes who formerly paid their family doctor moderate fees.

The growth of education, too, has undoubtedly lessened the demand for doctors' medicines in many ordinary diseases, while the convenient forms in which drugs can be obtained from chemists, the enormous number of proprietary and quack medicines, and the ready way in which so many chemists prescribe for even serious illness, have all tended to reduce the income of the general practitioner. Added to all this is the fact that medical fees are much lower than formerly. In ordinary town practices half-a-crown for a visit and medicine is a theoretical average for the working classes, but if the number of bad debts is taken into account the average received is much less. Twenty years ago the midwifery practice of a general practitioner furnished an important part of his income, and probably seventy per cent. of the confinements were attended by doctors, whereas in numerous towns at present as many as eighty per cent. of the confinements are attended by midwives, and even for those that are attended by doctors the fees are much less than they were.

Contract practice.

But perhaps the one factor that, more than any other, has roused the profession to see the necessity for organisation, is the enormous growth of contract medical practice. Originally started on a charitable basis to help the poor to obtain medical attend-

ance while preserving their sense of independence, at present all pretence of charity must be abandoned. The clubs are simply a bad speculation to which the profession is reduced through the force of competition. The British Medical Association has freely recognised that a large proportion of the working classes cannot make provision for even ordinary medical attendance, except through some provident or insurance organisation. They are unable to pay adequate medical fees, and if they honestly attempt to do so, anything like a serious illness cripples them financially for months afterwards. It is not then so much to the provident system that objection has been taken as to the abuses of it which have sprung up, and it was to cope with these, more than for anything else, that the British Medical Association determined about ten years ago to organise itself on a more democratic basis. One of the first things that the Association undertook after its reorganisation, was a full inquiry into the economic conditions of contract medical practice, an inquiry which occupied two years and the results of which were published in 1905. Broadly speaking, the clubs may be grouped under the following heads:

1. Friendly Society clubs, including both the permanent societies and the dividing societies, which generally provide other benefits as well as medical attendance.

2. Friendly Society Institutes which are affiliations of the friendly societies for the special purpose of providing medical attendance.

3. Medical Aid Associations organised by non-medical persons and greatly objected to by the profession, as they are often mere speculations for the direct or indirect benefit of their promoters.

4. Works clubs organised either by employers or workpeople and often controlled almost entirely by a committee of the workpeople.

5. Provident dispensaries organised on a semi-public basis and often partly dependent on charitable donations.

6. Public medical services organised by the medical profession.

7. Private clubs organised by individual practitioners.

In the vast majority of these organisations there is only a collective choice of doctor, one or sometimes several medical men being elected by a meeting of the members to attend to all the members. In the Medical Institutes and the Medical Aid Associations the medical officer has generally to devote his whole

time to the club work in return for a fixed salary, with residence, allowance for horse hire, and sometimes extra payment for certain special services, drugs being provided by the club. About 70 of the Medical Institutes are further affiliated to a body called the Friendly Societies' Medical Alliance, and while in some of the institutes the medical officers are fairly remunerated and not over-worked, in others the salary is totally inadequate and the work far more than can be done satisfactorily. In most of the other clubs which form the great bulk of the total number, a general practitioner is appointed who undertakes the work in addition to his private practice, and almost universally a capitation system of payment is adopted. The abuses of which the profession complains may be summarised as follows:

1. There is often no written agreement, so that the members can demand practically every possible form of medical and surgical attendance, though a sort of tacit understanding excludes major surgical operations, and if there are women members, as is sometimes the case, midwifery is excluded except at agreed extra rates which are generally much below the average rates of the district. As a result of this, there is a tendency whenever possible to draft every troublesome case off to some hospital, and as this costs the patient nothing and saves the doctor some work there is often no objection taken, though it gives rise to a form of hospital abuse for which the doctors may be blamed.

2. There is generally no wage limit for admission, or if there is a theoretical limit it is not properly enforced.

3. There is nothing approaching security of tenure, as the doctor may be dismissed for the most trivial causes; and as the complainants are also the judges, dismissal may occur for what the members may consider to be harshness but what the doctor considers to be necessary to prevent malingering.

4. The remuneration is generally totally inadequate for the amount of work done. This is fully shown by the statistics obtained by the British Medical Association as the result of the inquiries made throughout the country in the years 1903–5. Many club doctors keep no full records of their attendances on club patients, but 269 clubs, providing attendance for adult males only, were taken, in which proper records had been kept and the following table shows the capitation fees received,

the number of members, the average number of attendances (visits or consultations) and the calculated average fee per attendance.

Annual capitation fee.	Members.	Average capitation fee.	Average attendances per member per year.	Average fee per attendance.
		s. *d.*		
2*s.* to 3*s.*	9,630	2 4½	3·59	7·05*d.*
3*s.* to 4*s.*	9,311	3 3	3·67	10·55*d.*
4*s.* to 5*s.*	17,741	4 1	4·46	10·98*d.*
5*s.* and upwards	4,211	5 5	5·43	13·36*d.*

The report of the British Medical Association from which the above table is taken continues: "It will be seen that on this basis the average fee per attendance is almost exactly 10½*d.*, and that each club member has on the average been attended four times during the year, the average annual subscription which members have paid being 3*s.* 7½*d.*" It may be noted that certificates of unfitness for work have to be given free, and the above table rather understates than overstates the number of attendances, as most club doctors keep no record of attendances on club patients when no medicine is given or when the patient simply calls for a certificate. Moreover, there are no extra fees of any sort and only in few cases can any reliance be placed on the introduction to the family when the head of the household is attended, owing to the prevalent idea that a club doctor is an inferior sort of practitioner, and if attendance on the family is required for which an ordinary fee is to be paid, "a proper doctor," as they say, is often called in. Thus, making every possible allowance for the fact that there are no bad debts and that the doctor is assured, so long as he has the club, of a certain quarterly sum with no trouble in book-keeping or collecting, the average fee of 10½*d.* for each actual attendance given compares very badly with the fees obtained from the working classes who are not club patients. It may well be asked: If such strong objections are entertained against club practice, why do general practitioners undertake it? The reply is simply that as a rule club work only forms a small part of their daily work, can be done in the intervals of the ordinary daily routine, often enables a new

beginner to earn a little money while he is building up a practice, and for the older practitioners serves to keep out other doctors from settling in the district; all perhaps somewhat mercenary motives, but having an important influence where competition is so keen.

It will be seen that all this has a very direct bearing on the Insurance Act, as it gives the key to the demands of the profession and explains many of the provisions which have actually been incorporated in the Act. It is not pretended for a moment that the profession has not itself to blame for many of the abuses connected with the clubs, and it has simply drifted through want of foresight into its present position. But, as the organisation of the profession improved, the British Medical Association decided to make a vigorous attempt to put an end to the evils of the system, and several years ago the Contract Practice Committee of the Association obtained the approval of the Representative Meeting, which on all questions of policy is the authoritative body of the Association, to a scheme for establishing what was called a Public Medical Service to be organised by the profession itself. In a few towns, such as Norwich, a medical service on the Association lines was actually established by the local medical profession, and several such services are now successfully competing with the Friendly Society clubs.

Poor Law Commission.

But the general carrying out of the scheme was interrupted by the appearance of the report of the Royal Commission on the Poor Law, which was seen to bear very directly on the problem, and a special committee was formed which carefully considered the recommendations of the Majority and the Minority reports so far as they related to a medical service. The result was that the Association decided to oppose the Minority suggestion that a unified medical service should be established under the control of the county and county borough public health authorities. It was felt that the Minority proposal for a system of whole-time medical officers could not for long be confined to the poorer classes, and that a free medical service open to all might result, which would cut at the very foundation of private practice. Moreover, there is no hiding the fact that no very cordial relations had existed for some time between general practitioners and the public health authorities, and the profession in general was opposed to any system that gave the Medical Officer of Health anything like a controlling influence in a service which would be

largely concerned with domiciliary medical attendance. From a public point of view, too, there would have been the greatest objection to any restriction in choice of doctor such as a whole-time service would have involved, and it was at this time that the principle of "free choice of doctor," now incorporated in Section 15 of the Act, came to be regarded as of fundamental importance both to the public and the profession.

On the other hand the medical service suggested by the Majority report rather tended in the direction of an extension of the contract system of the clubs and while the British Medical Association favoured the Majority proposals rather than the Minority, it preferred the scheme which it had itself drafted for a medical service organised by the profession. It was therefore intended to carry out this scheme as soon as possible, in order to anticipate the proposals of the Poor Law Commissioners, and there is little doubt that the scheme would quickly have replaced the old club system by a form of provident medical service which would have revolutionised private practice among the lower working classes.

The National Insurance Bill.

But for the second time the intention of the Association was interrupted by the announcement of the National Insurance Bill. By this time however the profession had adopted certain principles which were considered to be fundamental in any national medical service, and no time was lost in placing these before the Chancellor of the Exchequer. These principles were incorporated in what came to be known as the "six cardinal points" in the policy of the British Medical Association, and an active canvass of the whole profession showed conclusively that the principles were universally accepted by the profession. These six cardinal points were formulated as follows, and they are significant as bearing on the important modifications made in the medical clauses of the Bill in the committee and report stages in the House of Commons. They take the form of a demand for—

1. An income limit of £2 a week for those entitled to medical benefits.

2. Free choice of doctor by patient, subject to consent of doctor to act.

3. Medical benefit to be administered by Insurance Committees and not by friendly societies.

4. The method of remuneration of medical practitioners adopted by each Insurance Committee to be according to the

preference of the majority of the medical profession in the district of that committee.

5. Medical remuneration to be what the profession considers adequate having due regard to the duties to be performed and other conditions of service.

6. Adequate medical representation among the Insurance Commissioners, on the central Advisory Committee, and on the local Insurance Committees, and statutory recognition of a local Medical Committee representative of the profession in the district of each Insurance Committee.

It may further be added that a very large proportion of the practitioners of Great Britain who might possibly be affected signed an undertaking that they would "not enter into any agreement for giving medical attendance and treatment to persons insured under the Bill, except such as shall be satisfactory to the medical profession and in accordance with the declared policy of the British Medical Association."

Part II

Duties of Medical Practitioners under the Act

It is not necessary here to go over the various stages of the controversy that took place between the Government and the British Medical Association while the Bill was in Committee, but an examination of the medical clauses of the completed Act will serve to show not only the position of the profession under the Act but incidentally how far the demands of the profession have been met in the Act itself. The benefits with which we are here more immediately concerned are :—

1. Medical benefit, to be administered by the Insurance Committees.[1]

2. Sanatorium benefit, also administered by the Insurance Committees.

3. Maternity benefit, to be administered, (*a*) for deposit contributors by the Insurance Committees, and (*b*) by the approved societies for their members.[2]

The duties falling to medical practitioners under the Act may be summarised as follows :—

1. As Insurance Commissioners.[3]

[1] S. 14 (1). [2] S. 14 (1). [3] Ss. 57, 80, 81, 82.

2. As members of the Advisory Committee.[1]

3. As members of the local Insurance Committees and possibly of the district committees.[2]

4. As constituting the local Medical Committee.[3]

5. Probably as medical inspectors, supervisors, etc.[4]

6. As examiners of candidates for admission to the approved societies where the societies require them.[5]

7. As medical officers for sanatoria and other institutions, and possibly for dispensaries for tuberculosis and other diseases, as well as for hospitals in general.[6]

8. For domiciliary attendance and treatment :—

(*a*) Ordinary medical benefit ;

(*b*) For tuberculosis and other specially prescribed diseases (sanatorium benefit) ;

(*c*) For maternity cases (maternity benefit) ;

9. Furnishing records of cases of illness, reports on health, lectures,[7] and for purposes of research (sanatorium benefit).[8]

10. Granting of various kinds of certificates such as those entitling to sickness and disablement benefits or those under s. 68.

Medical benefit furnishes by far the greatest part of the work falling to general practitioners, and it is important to recognise that medical benefit may take various forms, as follows :—

(*a*) Ordinary medical benefit which is defined in s. 8 (1) (*a*) as "medical treatment and attendance, including the provision of proper and sufficient medicines, and such medical and surgical appliances as may be prescribed by regulations to be made by the Insurance Commissioners," the arrangements for granting the benefit being made by the Insurance Committee,[9] or in certain events by the Commissioners.[10]

(*b*) In certain cases it may take the form of a contribution towards the cost of medical attendance and treatment (including medicines and appliances) obtained by the insured under their own arrangement.[11]

(*c*) Medical attendance and treatment obtained through existing systems and institutions may be regarded as, or as part of, medical benefit.[12]

[1] S. 58.
[2] S. 59.
[3] S. 62.
[4] Ss. 57, 59, 80, 81, 82, etc.
[5] S. 30.
[6] S. 16.
[7] S. 60.
[8] S. 16.
[9] S. 14 (1).
[10] S. 15 (2) proviso.
[11] S. 15 (3).
[12] S. 15 (4).

(*d*) A sum of money paid in lieu of medical benefit proper, when the benefit is suspended.[1]

Administration of Medical benefit.

In the Bill as originally introduced medical benefit was to be administered by the approved societies for their members and by the Insurance Committees for other persons (deposit contributors); except that any society might if it thought fit, enter into an agreement with the Insurance Committee for medical benefit to be administered by the Committee for the members of the society resident in the area of the Committee. The administration of the benefit by approved societies was at once strongly opposed by the medical profession and some acrimonious discussions arose between the profession and the friendly societies. Most of the dividing societies assented to the transfer of medical benefit to the Insurance Committees, but the feeling in favour of retaining the administration in their own hands was so strong in many of the great friendly societies, such as the Manchester Unity and the Foresters, that the Government decided to leave the question to the House of Commons entirely. Accordingly, Dr. Addison, M.P., acting on behalf of the British Medical Association, proposed an amendment to the effect that medical benefit should in all cases be administered by the Insurance Committees. This received the personal support of the Chancellor and was carried by the large majority of 387 to 15. Probably the arguments that had the greatest weight with the House of Commons, apart from the insistent demand of the medical profession, were the urgent public need for uniformity in the medical service, which could hardly have been attained if every approved society had adopted its own methods, and the obvious fact that the withdrawal of the administration from the societies could not possibly harm them, but would indeed be advantageous to their members, seeing that under the provisions of the Bill the Insurance Committee might have recourse to county and county borough councils and the Treasury if the funds available for the benefit were insufficient,[2] which recourse was not open to the societies themselves. Thus one of the six cardinal points in the policy of the British Medical Association was secured by the provision in s. 14 (1) that "medical benefit shall in all cases be administered by and through the Insurance Committees."

But the satisfaction of the profession at this decision of Parliament was considerably disturbed later on by two facts, first that

[1] S. 15 (2) proviso. [2] S. 15 (7) and (8).

the approved societies were granted a much larger majority of representatives on the Insurance Committees than before, so that after all they could exert a preponderating influence on the Committees, and secondly, by the introduction of what is known as the "Harmsworth amendment."[1] With regard to the constitution of the Insurance Committee the medical profession could not reasonably expect more than enough representatives to be able to voice properly its opinions in matters relating to the profession or to public health, but at the urgent request of the British Medical Association the medical representatives were increased so that in a committee of 40 there will be at least 4 medical men, in a committee of 60 or upwards at least 5, and in a committee of 80 at least 6, and in every case two of these are to be directly elected by the local profession itself.

With regard to the Harmsworth amendment, the exact wording of which should be referred to,[2] it was introduced by Mr. Harmsworth, M.P. for Luton, primarily to protect the vested interests of the Medical Institutes already mentioned, one of the most flourishing and best conducted institutes being in the constituency represented by Mr. Harmsworth. It is to be remembered here that the Medical Institutes are affiliations of friendly societies; so that the section continues the administration of medical benefit by the friendly societies in these cases in opposition to s. 14 (1), which provides that medical benefit shall be administered by the Insurance Committees in all cases. Further, the institutes have generally only one specially appointed and salaried medical officer to whom the members of the affiliated societies are under a certain amount of constraint to go in case of illness, an arrangement which tends to interfere with the operation of s. 15 (2), providing for free choice of doctor for the insured. The introduction of the words "existing at the time of the passing of this Act" was intended to prevent the establishment of any new institutes, but the word "system" which is used may bear such a wide and generic meaning that the fear was expressed that, though no new "system" could be established, innumerable medical clubs could be established under one existing "system." This would arouse the most bitter opposition, threatening to amount almost to a boycott by the medical profession. There are, however, two important safeguards which the section now provides—first, that every system

[1] S. 15 (4). [2] *Ibid.*

and institution must be "approved by the Insurance Committee and Insurance Commissioners," which may reasonably be expected to prevent the abuses of which the profession complains in some of the Institutes; and, secondly, that by the addition of the words from "so however that such regulations" to the end of the section, it is provided that there shall be no interference with the full right of every insured person to free choice of doctor.[1] This proviso was introduced at the request of the British Medical Association, and though nothing can prevent the affiliated societies offering indirect inducements to their members to employ one doctor specially appointed by the Institute, every member may, "if he so elects," freely choose any other doctor to attend him. In return for this and other concessions the Association agreed to s. 15 (2)(*e*), which provides that present members of Friendly Societies who, through age or invalidity, cannot become insured, shall get medical attendance on the same terms as insured persons. The Friendly Societies must provide medical attendance for these members as long as they live, but the club doctors might refuse to take the bad lives without the good. The fees for these cases will of course come out of the private funds of the societies, and even though they are higher than in the past, the societies will be able, owing to their released reserves, to meet the cost. The number affected is small and rapidly diminishing.

Free choice of doctor.

Probably none of the six cardinal points in the policy of the British Medical Association has been granted more fully in the Act than what is known as "free choice of doctor," with its necessary corollary that every reputable medical practitioner shall be at liberty to take part in the medical service. There are in fact no reservations except such as may arise from a breakdown of the system in any locality, or from the right on the part of the doctor to refuse to accept a particular patient. The principle commended itself at once to Parliament on the ground, no doubt, that to compel any person to be insured and to pay towards his insurance, and yet to compel him to have as his medical attendant one whom he might distrust, would be unreasonable, especially as the element of confidence in a medical adviser is an essential factor in the cure. As so many questions arise it may be well here to give an explanatory summary of the provisions of

[1] S. 15 (2).

s. 15 (2) (*a*), (*b*), (*c*), (*d*), dealing with the subject. This section provides or necessarily implies the following:—

1. One or more lists, or panels, of doctors who are willing to enter into an agreement to attend the insured, are to be drawn up and published by every Insurance Committee for its area.

2. The panel is open to all duly qualified (*i.e.*, registered[1]) medical practitioners and is not confined to those resident in the area, so that a doctor may be on several panels at once. No section of the profession is excluded, whether general practitioner, consultant, surgeon, or specialist.

3. The insured shall have free choice among the doctors on the appropriate panel, but this choice shall only be exercised at prescribed periods, no change of doctor being allowed in the interval.

4. At the same time every doctor is at liberty, at the prescribed period, to refuse to accept any person as his patient, but having once accepted him, the doctor will be bound to attend him whenever necessary until the next prescribed period.

5. The Commissioners alone, not the Insurance Committee, can remove a doctor from the panel, but only after a prescribed form of inquiry, and if they are satisfied that his continuance on the panel is prejudicial to the efficiency of the medical service.

6. The doctors on the panel must, so far as practicable, distribute among themselves persons who fail after notice to select a doctor or who are refused by the doctor whom they select. Presumably the regulations will provide for cases where this is not practicable.

No definition is given of what is meant by "medical attendance and treatment," but as ordinarily used and applied to domiciliary attendance the term means all attendance and treatment, including minor surgical operations, that can be properly carried out in the doctor's surgery or the patient's home. It may perhaps be taken for granted that separate agreements will be made for the domiciliary treatment of tuberculosis and the special diseases to be prescribed by the Local Government Board as coming under sanatorium benefit.[2] It remains to be seen whether the approved societies for their members, or the Insurance Committees for deposit contributors, will endeavour to get agreements as to fees for midwifery cases, or whether the women themselves will be left to make their own arrangements, but the free choice of

[1] 21 & 22 Vict. c. 90, s. 34. [2] S. 8 (1) (*b*).

doctor or midwife by the woman is specially provided in these cases.[1]

The panel.

The formation of the panels for medical benefit will be one of the most onerous and difficult tasks of the Insurance Committees. Not only will the range of the ordinary duties required from the doctors have to be carefully defined in the agreements (subject to the regulations), but special arrangements will be necessary about mileage, night visits, drugs and dressings supplied in emergencies by the doctors, minor, and even major surgical operations, anæsthetics, consultations, &c. No inclusive fee to cover everything will be possible or even desirable, and there are evident signs that the struggle about the amount of the fees and the method of payment will be long and strenuous. The fixing of an income limit under s. 15 (3) will introduce difficulties not only with the profession but with insured persons, and all these questions will have to be settled before the panels can be formed. A still further difficulty will arise from the action of the British Medical Association, which has decided to secure that no agreement shall be signed anywhere until all agreements are satisfactory everywhere. This very radical decision was intended to support the profession in districts where it is badly organised, and it is only qualified by the provision that the Council of the Association shall not be bound to adhere to it where it considers the demands of the local profession are unreasonable. Neither is it suggested that the terms and conditions should be uniform, as local circumstances will have to be taken into account. The time required before all these arrangements can be made throughout the country will be considerable, but it will certainly be well spent if a satisfactory domiciliary service is the result, with full and free choice of doctor for the insured.

"The doctors' strike."

The question presents itself here, what will happen if an Insurance Committee fails to secure a satisfactory panel of doctors, either as regards their numbers or their professional standing, or in other words, if the local profession absolutely refuses to enter into any agreement with the Committee to give attendance and treatment to the insured except on terms which the Committee cannot entertain? The Committee is under statutory obligation to do something, and several methods are provided in the Act for escaping the difficulty, which need special consideration. It appears to be fairly evident that section 15 contemplates that pay-

[1] S. 18 (1).

ment by capitation fee will be the rule, though payment for each attendance given is not precluded, and probably most of the disputes leading to non-formation of panels will be as to the amount of the capitation fee. Without laying any stress on the figures, it might happen that the doctors in an area refused to accept less than 8*s.* as the annual capitation rate for all the insured, whereas the Committee was only prepared to pay 6*s.* In such a case the Committee might perhaps escape the difficulty by taking advantage of s. 15 (3) and fixing a very low income limit of say 25*s.* a week. It would then "require" all the insured having an income exceeding 25*s.* to make their own arrangements for medical attendance and treatment and would credit each with 6*s.* a year to be used towards the cost of such attendance when actually incurred. If such a person had no illness for five years there would then be standing to his credit a sum of 30*s.* on which he could draw towards paying any doctor's bill that he might then incur, while if at any time the amount standing to his credit were insufficient to meet his bills, any excess would have to be paid by the insured out of his own pocket. At the same time possibly the doctors would accept the 6*s.* capitation fee for persons whose incomes were below 25*s.* a week, though they might absolutely refuse to accept 6*s.* for persons above that limit. This would be a perfectly feasible arrangement and may perhaps be resorted to when occasion arises. The objections would come from insured persons who are fond of running to the doctor for all sorts of trifles, and from chronic invalids requiring far more attendance and treatment than could be covered by a contribution of 6*s.* a year.

Again, under what has been called the "strike-breaking proviso" at the end of s. 15 (2), if a satisfactory panel cannot be formed, the Commissioners may dispense with the necessity of adopting the panel system with free choice of doctor, and authorise the committee to make other arrangements or may themselves take the matter in hand. The most likely arrangement would be the appointment of salaried whole-time or part-time medical officers for the area, imported from outside the district if they could not be obtained in the district. This would of course stir up the most bitter feelings in the local profession, part of whose work would be taken out of their hands, and it is not unlikely that the profession would obtain sympathy from the insured themselves, who would resent having strange doctors thrust upon them who

were regarded as "blacklegs," instead of being allowed the doctor of their choice in whom they had confidence.

Another method of getting over the difficulty is provided by the latter part of the proviso at the end of s. 15 (2), that is the power given to the Commissioners to suspend medical benefit for all or any of the insured in an area and in lieu of it to give them a sum of money equal to the estimated cost of medical benefit, in cash, which the insured might use as they pleased. In such a case the persons affected would be left to make their own arrangements for medical attendance. Here again the objection would be greatest in the case of chronic invalids as the sum given would not be sufficient to pay for a doctor. As far as the doctors are concerned it would perhaps appear at first sight that they would be left in the same position as if the Insurance Bill had never been introduced, but in practice that would hardly be the case. It is practically certain that the approved societies would at once set about forming for their members medical clubs of their own *outside the Act altogether*. With the suspension of medical benefit of course all the provisions for medical benefit would be suspended. Any clubs thus formed outside the Act would be under the complete control of the approved societies, the Insurance Committee being out of action in this respect, and the free choice of doctor section would be inoperative. The societies would make their own arrangements with individual practitioners without any necessity of consulting the Local Medical Committee, and very soon the profession would be driven into an interminable series of local struggles not only with the societies, much stronger than they are at present, but with the selected club doctors, who would have a valuable monopoly to defend. The money available for paying the doctors would be the cash allowance from the Commissioners to the insured, after subtracting the cost of administering the clubs, and anything else that the insured like to spend on themselves. In short there would be an enormous extension of the present club system with all its evils, as there is only too much fear that if the profession were thus attacked in detail the societies would have no more difficulty in finding a sufficient number of club doctors than they have to-day.

It will be seen from the above that the position of the Commissioners in dealing with what is, not quite correctly, called a "strike" of doctors, is extremely powerful, and when it comes to the point, the profession will probably see that it will be in a

better position if it relies rather on the fairness and justice of its demands, supported by all the protecting clauses of the Act, than on a suicidal strike policy. It is to be remembered that even in the case of persons who are "allowed" to make their own arrangements for medical attendance under s. 15 (3), the Commissioners and the Insurance Committees will probably demand some sort of control. They can never be expected to accept certificates of unfitness for work, entitling to sickness or disablement benefit, from sources that may be open to suspicion, and for the sake of protecting the funds they will have some reason for insisting that the private arrangements shall be satisfactory. Thus even if a practitioner refuses to act on the panel he may not escape altogether some interference from the Insurance Commissioners and Committees, though he would have deprived himself of all the protection which the Act provides for the members of the panel.

Disciplinary control.

A serious question for the profession arises under paragraph (*b*) of s. 15 (2), namely, the procedure for excluding a practitioner from the panel. In a working class district where all the practitioners may find themselves compelled to join the panel when once formed, at the risk of losing a large proportion of their patients, the penalty of being struck off the panel would entail most serious financial loss and irretrievable damage to professional reputation. The Act simply provides that when the question arises about any practitioner, "where the Insurance Commissioners, after such inquiry as may be prescribed, are satisfied that his continuance in the list would be prejudicial to the efficiency of the medical service of the insured, they may remove his name from the list," but no hint is given in the Act as to the form of the inquiry or by whom it is to be conducted. Apart from the common law, the only disciplinary powers over the profession are by law invested in the General Medical Council which is entirely composed of medical men, and it is provided by the Medical Act of 1858 that "if any registered person shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall, after due inquiry, be judged by the General Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the register,"[1] and the General Council is itself

[1] 21 & 22 Vict. c. 90, s. 29.

the sole judge of what is meant by "infamous conduct in a professional respect." The British Medical Association has simply the power of any society to expel any of its own members from the Association, and apart from this and the ordinary power of professional "boycott," there are no other disciplinary powers over the members of the profession. But the Act now proposes to introduce a new and drastic disciplinary measure which may have the most far-reaching effects. It confers not simply the power of an employer to dismiss an employee, but in practice such dismissal must inevitably damage the employee's professional position, and while the power of dismissing from the panel cannot possibly be denied to the Commissioners, the question arises whether this power ought to be exercised except for such offences as might come under the cognizance of the General Medical Council. Offences such as touting for patients or encouraging or neglecting to prevent malingering by giving false certificates either carelessly or purposely in order to ingratiate oneself with the insured, might properly be judged by the General Medical Council as "infamous conduct in a professional respect," for which the Commissioners would rightly remove any doctor from the panel.

But it is unfortunate that the General Medical Council is unable to inflict any less penalty than the extreme penalty of erasure from the medical register, while it is probable that the great bulk of the charges made against the doctors on the panel will be charges of careless or unsympathetic treatment. Such cases would generally find their own retribution in loss of patients, but the British Medical Association suggests that all charges should in the first instance be investigated by the Local Medical Committee, and if its decision be not accepted by all parties concerned, that they should be referred to a special Medical Court of Appeal to be constituted under the Act, whose decision should be final.

Malingering.

It is to be expected that in any State scheme, which is wrongly supposed to have inexhaustible funds, many persons will be found who will persuade themselves that the chances of inflicting any appreciable damage on their State-assisted society are so remote that they may as well get all they can out of the funds. It has been a common experience in Germany that the claims for sickness benefit have risen during times of unemployment, not from any increase of real illness, but from a determination to have

something out of the funds while wages are short. The same may be expected in England during strikes, when unemployment benefit is not paid, as in nearly every society there are members who are always ready to exaggerate any slight illness into an excuse for several weeks' sick pay. They learn exactly what diseases are most easily simulated, and the system of free choice of doctor may easily be brought into disrepute, as these persons will choose that doctor who, as they think, will make the least difficulty in giving certificates. It has been claimed that whole-time medical officers receiving fixed salaries and so not dependent on the number of patients they can attract would be more efficient in preventing malingering, and studies less temptation to do what is simply pleasing, though often not beneficial to the patients. On this account some of the German insurance societies profess that they have found it better to employ selected salaried medical officers rather than allow free choice of doctor. To this it may be replied that a salaried medical officer may be under undue temptation to please the officials on whom any chance of promotion or increase of salary depends, that competition of a wholesome kind between individual practitioners, which would be maintained by free choice of doctor, would tend in many ways to efficiency of the service, and that, after all, even an excessive desire to please the patients may be more advantageous from a medical point of view than the results of an undue desire to please officials or the somewhat routine habit into which a salaried medical officer might be apt to fall.

The malingering that exists at present in the friendly societies and clubs is deplorably great in amount, and the club doctors find the greatest difficulty in coping with it, sometimes from doubts in diagnosis, but quite as often from a fear lest they should be suspected of trying to escape the trouble of attendance and treatment. The fear of becoming unpopular is always present, and it is not rare to hear club doctors say that it is not to their interest to insist on "signing a member off sick pay" until the member himself expresses a desire to return to work. Undoubtedly one of the most efficient checks will be got from the fact that the Act places the administration of sickness and disablement benefit in the hands of the societies themselves, as it is to the interest of every member to prevent all excessive claims on the funds with the view to the provision of additional benefits. The machinery of sick visiting and the personal know

ledge which most of the members have of each other will enable the lodges to exert the most powerful influence in checking malingering. The punishment of persons found guilty should be sharp and decisive. The mere refusal of the benefit wrongfully claimed is not sufficient, and a fine or prolonged suspension should be imposed.

Independent medical referees will almost certainly be required for other purposes, and might well investigate suspected cases of malingering. A measure of opprobrium will always be attached among a certain class of the insured to doctors who may have to expose such cases, and every possible method should be taken to see that no doctor suffers from performing his duty in this respect. The mere detection of malingering medically is often one of the most difficult tasks, as is evident from the divergent opinions often given by medical men in cases under the Workmen's Compensation Act, seeing that not a few diseases, such as lumbago and neuritis, present no visible or detectable signs and yet serious results from both a legal and a medical point of view may follow any mistake. On this account the doctor should be at liberty at any time, without necessarily informing his patient of his object, to refer him to the medical referee for examination and thus to shift the onus on to an independent authority.

There can be no doubt that some machinery will be necessary for dealing with any of the doctors of the panel who may be suspected of carelessness in giving certificates or of distinct encouragement of malingering in order to gain favour with a certain class of the insured. A safeguard may be found in the fact that, even from the baser motives of professional jealousy, it will be to the personal interest of the other members of the panel or the local medical committee to keep a sharp watch on any practitioner who is seen to be attracting an unusual number of patients; and if, as is suggested, the local Medical Committee is made into a sort of court of first instance for hearing charges of this character, it will not be found to be biassed unduly in favour of the practitioner who is under the charge. Its interests will be identical with the interests of the insurance funds, seeing that the other doctors on the panel will be the sufferers from any such offence. The influence that may thus be exerted by the local medical committee is quite a new factor, which, properly directed, may prove to be of the greatest value in what will always be a most difficult and odious business.

Methods of remuneration

Under the German insurance scheme, there are four principal methods of remuneration of medical practitioners:

1. Payment by fixed salary of selected whole-time medical officers, who attend all the insured in a limited district.

2. Payment of a fixed salary to district medical officers, who are allowed at the same time to engage in private practice in the same way as our own district medical officers under the Poor Law.

3. Payment of an annual capitation fee in respect of each insured person whom the practitioner has agreed to attend, the fee covering all necessary attendance that can be given at the doctor's surgery or the patient's home.

4. Payment of a separate fee for each attendance actually given, according to an agreed scale.

Employers of labour in Germany have a decided preference for the first method of whole-time medical officers, and the fact that the employers have been willing, and indeed desirous in some parts, to contribute one-half instead of one-third of the insurance premiums for their workpeople, is partly because they thus obtain one-half of the representation on the committees of the guild sick clubs, which enables them to exert greater influence in the appointment of the medical officers. In some districts this has been greatly resented by the workpeople, who prefer to choose their own doctor. The medical profession at large, both in Germany and England, regard the whole-time or part-time salaried system as an unwarrantable interference with general practice, though it may be convenient from a purely administrative point of view, and the system of allowing both doctor and patient reasonable freedom of mutual choice will continue to be regarded as preferable both by the insured and by the profession. The British Medical Association has expressed itself as strongly opposed to the salaried system, whole-time or part-time, so far as domiciliary attendance is concerned, and holds that in actual practice the whole-time or part-time salaried officer exerts no greater effect in preventing malingering than can easily be attained under the system of free choice of doctor.

Assuming then that free choice of doctor is adopted, according to s. 15 (2) of the Act, there are wide differences of opinion as to the relative advantages of the capitation payment and payment per attendance according to fixed

scale. In some parts of Lancashire, the capitation system is utterly abhorred by the profession, and even if the total amount available in a district for medical fees be limited in advance, the profession would prefer to be paid separately for each attendance actually given, fully cognizant of the fact that in times of epidemic or unusual sickness, the separate fees would be proportionately reduced. The underlying idea is that patients paying a capitation fee, which covers all attendances required, are apt to demand unreasonable attendance, and to go to the doctor for every imaginary or trifling ailment. It cannot, however, be taken for granted that the profession would for long acquiesce in the total amount for a district being limited in advance; and if it were not, the objection to the system would then be made by the insurance authorities that there was nothing to prevent a doctor giving, or a patient demanding, an unnecessary number of attendances. It is pointed out that in several towns in Germany, under the insurance scheme, and in France, under *Assistance Médicale Gratuite*, where payment has been per attendance (*à visite*), the authorities have found it necessary to limit the total for the district, so that the greater the number of attendances given, the less each fee works out. It is impossible, and hardly desirable here, to summarise the numerous arguments advanced by the supporters of each method of payment, and it must suffice to state shortly what appear to be the administrative arrangements necessary in each case.

The capitation system.

If a capitation system were adopted, each insured person would at the beginning of prescribed periods (year, half-year, or quarter, as arranged), declare which doctor in the panel he wished to attend him in case of illness, and if the doctor agreed, the capitation fee would be assigned to him, and the insured person would be entitled to demand that doctor's attendance whenever necessary during the period. Neither doctor nor patient would be at liberty to alter this arrangement until the end of the period except for some urgent reason and with the consent of the Insurance Committee. The kind of service to be rendered by the doctor would be defined in the agreement between the doctor and the Committee, which would also name any extra fees for mileage, night visits, operations, and so on, and might limit the right of the doctor to delegate his duties.

Payment per attendance.

If the system of payment per attendance were adopted, a scale of fees for visits, consultations, operations, &c., would be drawn

up after consultation between the Insurance Committee and the Local Medical Committee, and any insured person requiring a doctor would obtain a voucher, valid for a certain period, from the appointed officer of the Insurance Committee, and would present this to the doctor of his choice who, if he accepted it, would render the necessary attendances and at the end of the period would return the voucher to the Committee after filling in his charges according to the arranged scale. The voucher might also be endorsed by the patient and would be renewable with the Committee's consent. Any check against unnecessary attendances could be obtained by a system of medical supervisors.

With regard to drugs and medicines and appliances, which are to be supplied by qualified chemists to the prescriptions of the doctors on the panel, the Pharmaceutical Conference strongly objected to any contract arrangement involving a capitation system of payment, and s. 15 (5) provides that they shall be paid for by the Insurance Committee according to a scale of prices to be fixed by the Committee. The intention of the Act is that the doctors on the panels shall not dispense their own medicines unless the circumstances of any district make it advisable, for example, in country districts where there may be no chemist within several miles. In that case the Commissioners may make an exception, and the Insurance Committee would then have to make a special arrangement for the supply of medicines by doctors.

Medical fees.

According to the actuarial calculations the sum of £4,200,000, that is, 6*s.* per insured person per year, is provided for medical attendance and treatment, drugs, medicines, and appliances under medical benefit. It appears to be necessary to point out that there is separate and additional financial provision made for medical attendance and treatment of tuberculosis and certain other diseases to be specified by the Local Government Board. Thus some of the most troublesome diseases requiring the greatest amount of attendance, such as consumption, tubercular meningitis and peritonitis, tubercular disease of skin, bones, and joints, and the other diseases to be named, may not be covered by any fees paid under the head of medical benefit. By the addition of the words "or otherwise" to the definition of sanatorium benefit ("treatment in sanatoria or other institutions *or otherwise*"[1]) apparently domiciliary treatment of tuberculosis may be undertaken and by s. 16 (1) the Insurance Committee is

[1] S. 8 (1) (*b*).

to make arrangements for the treatment with "persons undertaking such treatment in a manner approved by the Local Government Board." Thus the doctors on the panel, if approved, would be able to undertake the domiciliary treatment of tuberculosis and the other specified diseases, for which they might claim fees in addition to those received under medical benefit. The same applies to confinement cases, these being paid for out of maternity benefit.

In addition to this the Chancellor of the Exchequer has made it quite clear that the money available for medical benefit is not limited to the actuarial estimate of 6*s*. In his Second Reading speech he said, "We have in the Bill provision for a margin which can be drawn on for increased benefit or increased payment of doctors," and again, "The doctor is the first charge; if I may put it in another way, the doctor has the first cut. We are raising something like, speaking from memory, 25 millions of money. There is nothing to prevent the doctors from walking off with every penny of it except their own common sense and the common sense of the community—absolutely nothing."[1] Apart too from this there is the provision made in s. 15 (7) (8) by which county and county borough councils and the Treasury may contribute, if the amount required for medical benefit is insufficient to meet the estimated expenditure, and the further provision of s. 63, which gives a claim on any persons or local authorities through whose fault any excessive sickness is caused. Thus the statement that has been made that nothing more than 6*s*. can be found for medical benefit is quite unwarranted.

The Manchester tariff.

Several tariffs of medical fees for ordinary domiciliary attendance have been published, but perhaps that most widely recognised by the profession was drawn up by the Manchester Medico-Ethical Association some years ago. According to this tariff, fees are varied with the income of the patient, but as this is difficult to find out, the rental of his house is taken as a rough guide, and for persons paying a rental of 4*s*. to 10*s*. a week, a visit or consultation is charged 2*s*. 6*d*. to 3*s*. 6*d*., night visits double, mileage 1*s*. 6*d*. a mile beyond one mile, confinements 21*s*., and for operations the Poor Law scale is adopted. According to the statistics already quoted, the average number of attendances given to every member on the books of a large number of friendly societies' medical clubs was about four in

[1] See s. 15 (6) and note thereto.

each year, so that if the minimum fees in this tariff were adopted it would require at least 10*s.* a year for each insured person, if the system of payment per attendance were adopted.

Club rates. Under the capitation system the average fee now paid in medical clubs may be taken at about 4*s.* per year, which covers medicines and also home treatment of tuberculosis, but not confinements. This might suggest that, when medicines and attendance on tuberculosis are excluded, a rate of 4*s.* ought to be ample. But the universal opinion of medical men, supported by both the Majority and the Minority Reports of the Poor Law Commission, is that the present club rates are altogether inadequate. The rates were originally fixed on a charitable basis, and though perhaps the element of charity is no longer a deciding factor, and the rates remain low simply and solely through the keen competition in the profession, the clubs are generally only taken as a makeshift because they can be worked in the intervals of ordinary private practice; but if contract work is to be extended to one third of the population, considerably higher rates will be demanded. There are several points about the clubs which need to be kept in mind. The duties are generally quite undefined, and the doctor can nearly always, and very often does, get rid of any troublesome patients by sending them to some hospital. Illness arising from misconduct, such as alcoholism or venereal disease, is hardly ever treated under the club rate, surgery is mostly excluded, various articles such as dressings, boxes for ointments and bottles are charged for, records of cases are rarely kept, and there is no clerical work, and it must be confessed that the time spent in examinations and diagnosis is often quite inadequate, as the patients are mostly satisfied if they get "a bottle." It is expected and hoped that all this will be altered under a State scheme, which would add very greatly to the amount of work required for the capitation fee. Of course it is useless to plead that the present members of clubs are picked lives, as that may continue to be the case in the approved societies, the bad lives, for whom special rates may be expected, being relegated to the class of deposit contributors. But at present the friendly societies have a fairly low age limit for admission, while under the Act no approved society will be allowed to refuse applicants on the ground of age alone.[1] This will raise the average age of the members for some years to come, and the sickness rates increase

[1] S. 30 (2).

so rapidly with age that, according to the Manchester Unity tables, the sickness rate between the ages of 60 and 64 is four times as high as it is between 40 and 44, which of course means a corresponding increase of work for the doctor. It is impossible to offer any opinion as to what a fair capitation rate should be until the duties are defined, but, so far as present indications go, the profession seems inclined to demand the same fee as is now paid to the Postal Medical Officers, if the work is similar to what the Post Office requires, while in some districts there may be a determined attempt to obtain the adoption of the system of payment per attendance.

Part III

Future of the Profession

It is impossible to forecast what the ultimate effect of the Act will be on medical practitioners, though the profession has a right to demand that its position should in no way be damaged. That more and better work will be required can only be assumed if the service is properly organised. The large sum of money that will come into the pockets of the doctors from the insurance funds cannot of course be regarded as a totally new addition to their incomes. It is rather that the doctors will be receiving payment from a different source as regards a large proportion of the sum, and the fact that it will be a more reliable source, so far as bad debts are concerned, is so much to the good. But whether any extra money received will be adequate for the extra work to be done, remains to be seen. Those who are personally acquainted with the medical attendance and treatment which is often doled out by "sixpenny doctors" in the crowded parts of our large towns, are convinced that there is an urgent public need for a determined attempt to raise the character of the medical service for the lower classes. The supervision necessary for this will undoubtedly be looked upon as irksome for a time by those practitioners who have been accustomed to rushing through as many patients in a day as possible on the excuse that the fees are so low and the bad debts so numerous that only through numbers can a bare living be made. It is true that many "sixpenny doctors" make enough money in a few years to be able to retire on their earnings, but in practically all these cases more patients are seen every day than can properly be attended to and the

health of the people is in fact only trifled with. If better attendance is required the number of patients seen will have to be less, and here a balance will have to be struck between an excessive number of patients paying small fees and getting bad attendance, and on the other hand a smaller number paying better fees and getting good attendance. The numbers seen must be less, but the work better, while the financial result to the doctors will depend on the increase in the individual capitation fees; and in spite of the evident administrative difficulties in the system of payment per attendance, it is doubtful how far the medical service can be improved by a capitation system which gives a fixed payment for as little work as will just pass muster.

The income limit.

The greatest concern has been expressed by practitioners who depend mostly on patients with incomes of from 30s. to £3 a week, who pay moderate fees fairly well. The quality of the work done in these middle class practices is on the whole decidedly good, only perhaps lacking something on its preventive side. It is here where the income limit is regarded as of the greatest importance. To have to attend for 6s. a year a person earning £3 a week who may have paid annually doctors' bills amounting to several pounds, will of course appear very galling. But attention is apt to be too much concentrated on these cases, and it is curious to note how often the fact has been overlooked that such practitioners will necessarily be paid for a much larger number of persons than they now attend. Not only will persons who have now no doctor at all have to choose some doctor to whom a fee will be paid whether attendance is needed or not, but a large number will have to be distributed who are now club patients or whom other over-worked practitioners will no longer be able to retain owing to the fact that better attendance will have to be given to each. From all the information of value about medical practices that the British Medical Association has been able to collect, it considers that an income limit of £2 a week (and in some districts less) is necessary to safeguard these middle class practices. That is, in accordance with s. 15 (3) of the Act, the Insurance Committees should "require" all insured persons whose income exceeds that limit to make their own private arrangements for medical attendance. In such case these persons would be themselves responsible in full for all doctors' bills which they might incur, and the doctors would not be directly concerned as to what amount of contribution towards their bills

is allowed by the Insurance Committee, except in so far as their fees are guaranteed up to this amount. If this is not done the demand will be for a much higher capitation fee all round. It is really a case of balancing the income limit against the capitation fee—the higher the income limit, the higher the flat rate of payment. It is quite possible that the Insurance Committees will find it to their advantage, in order to save the insurance funds, to fix a much lower income limit in some places with a lower capitation fee for persons below the limit, and it is only in some such way as this that middle class practices can receive the protection which can justly be demanded.

Club doctors.

The effect of the Act on the several thousand practitioners who depend mostly on clubs will probably on the whole be good. By the operation of the free choice of doctor,[1] they may be expected to lose some of their present club patients. On the other hand they may expect to obtain some of the new members of the approved societies, some of whom will be altogether new and therefore so much to the good, while others will be simply changed from private patients into capitation patients with a result which will be better in the case of those who are now bad-paying patients and worse in the case of those who are good-paying patients. There is of course truth in the suggestion that club doctors who have treated their present patients properly will lose very few through the free choice of doctor, and will in fact be able to afford to lose some when the capitation fee is raised. But many of them have an uneasy feeling that they have only had a very loose hold on many of their club patients who have gone to them simply because it is cheaper. There is something, too, to be said for the idea that the reputation of a club doctor as only an inferior sort of practitioner will stick to them, so that instead of what is now a sort of monoply, they will be driven into competition with other doctors who have a better reputation. Thus all that can be said is that the results will vary and no rule can be given, though on the whole, considering that most of the club doctors practise in the poorer districts, they stand to gain under the Act.

Colliery and works doctors.

As for the colliery and works doctors, they will as a rule be able to continue much on their present lines if advantage is taken of the provision of s. 15 (3), by which any persons may be allowed to make their own arrangements for medical attendance.[2] These

[1] S. 15 (2). [2] Or of s. 15 (4).

clubs are generally well organised, the medical service is excellent and the members have often a greater freedom of choice o doctor than in the ordinary friendly society clubs. At present they often provide, by a deduction from wages, medical attendance for both the workers and their families and dependants, and in future there may be double deduction from wages, a lower one under the Truck Act for medical attendance for the families and dependants, and the new one under the Insurance Act, to secure all the benefits of the insurance for the worker himself.

Poor Law medical officers.

The District Medical Officers under the Poor Law number about 3,700 in England and Wales. Nearly all of them are engaged in general practice and in receipt of fixed salaries for giving medical attendance to any poor persons who present an order from the relieving officers. Most of them are miserably underpaid, and Dr. J. C. McVail, in his report on the Poor Law medical service to the Royal Commission on the Poor Laws, says, that in a number of instances investigated, he found that the average fee for each visit or consultation with its usual bottle of medicine worked out at from 3½*d.* to 6*d.* On the whole their work is well done and they do far more than they are paid for. It has been pointed out that the Poor Law statistics of Germany do not show that great reduction in poverty which was expected from the operation of the German Insurance schemes. Unfortunately, the statistics are very incomplete, especially for the country districts; but where anything like proper statistics are available, as for some of the large towns, there can be no doubt that the poor funds have been greatly relieved by the insurance laws. Dr. Muensterberg, late director of the Berlin Poor Law Administration (quoted in a White Paper presented to the House of Commons), says:—"In consequence of the sickness insurance law all industrial workpeople, and to a large extent the members of their families as well, have been lifted above the necessity of seeking poor relief in time of sickness," and he shows that even where the expenditure on paupers shows no decrease, such expenditure would have been much greater without the insurance, since the major part of those insured would have needed poor relief. Any growth of poor law expenditure is in fact due to the general raising of the standard of life, which has compelled the poor law authorities to improve their provision for the poor. Dr. Zahn, director of the Bavarian State Statistical

Office, says that the "system of social insurance has justified itself as against poor relief in the same way that hygiene has done in relation to medicine—it has on the whole diminished the sum total of poverty, which the poor law is only able to relieve in individual cases. Without this legislation poverty would have been much more general in the lower classes of society and the poor law would have had to incur a far greater expenditure on account of the most urgent cases of need." But whatever may be the general effect of the insurance scheme in England, there can be little doubt that the number of persons applying for orders for the attendance of the poor law doctors will quickly be lessened and this may lead in the future to less salaries being offered to the District Medical Officers. On the other hand seeing that they are nearly all engaged in private practice, they will be able to be on the local panels and to have their chance with the rest of the doctors of the area of obtaining insured persons as patients. And though the fact of their being poor law doctors may perhaps to some extent prejudice them as members of the panel, they may receive separate fees for persons whom they would otherwise have had to attend under their general contract with the Board of Guardians.

Hospitals.

In a memorial presented to the Chancellor of the Exchequer in June, 1911, on behalf of the voluntary hospitals of Great Britain and Ireland, by the British Hospitals Association, it was stated that the voluntary hospitals of the kingdom are now providing hospital accommodation at an annual cost of nearly £4,000,000, exclusive of interest on the cost of buildings, and the greater part of this sum is obtained from legacies, donations and subscriptions; and the fear was expressed that the Insurance Bill would lead to a great reduction in the contributions of employers and employed. The memorial urged that, as insured persons would continue to go to the hospitals for medical and surgical treatment, the benefits under the Bill should be extended to cover the treatment in general or special hospitals, and that arrangements should be made to recoup the hospitals for any expenses incurred in the treatment of the insured. This would practically have amounted to the introduction of a hospital benefit, either in addition to, or instead of, the sanatorium benefit. Leaving out of account for the present sanatorium benefit, the only provisions in the Act for institutional treatment, are (1), in section 21, under which approved societies

and Insurance Committees may grant donations or subscriptions to hospitals or other charitable institutions, and (2), in section 12, under which, if a person has no dependants and is an inmate of a hospital, the whole or part of any sums payable as sickness or disablement benefit may, if an agreement for the purpose has been made, be paid towards the maintenance of the insured person, while in the case of a married woman or widow receiving both sickness or disablement benefit and maternity benefit, the last-named sum may be paid to the hospital, whether she has dependants or not. It may be mentioned, by the way, that, under s. 51, special relief is granted on certain conditions to managers of charitable institutions, so far as concerns their liability to pay contributions for their employees, such as nurses. It is specially to be noted that contributions towards hospitals are optional on the part of approved societies or Insurance Committees, and the insurance scheme largely depends on charity for the hospital treatment of the insured.

It is a matter for doubt whether charitable donations and subscriptions to hospitals will actually be lessened or not through the Act, as the British Hospitals Association fears. The idea underlying this fear is that employers and employed will consider that their insurance contributions cover, or ought to cover, all medical treatment required for the insured, and will refuse, as they will say, to pay twice over. The same fear was expressed when the Workmen's Compensation Act was first introduced, but happily it was not realised to any great extent, and though it is possible that subscriptions may be lessened for a time, the public will simply have to be taught that, to cover the expenses of hospital treatment, either a large extra grant from the State would be necessary or a considerable increase in the insurance premiums. The hospitals find themselves in a difficult position, since they desire to maintain their present position as voluntary charities and to receive grants from the insurance funds, while avoiding as far as possible any public control. They are convinced that it would be a calamity if the voluntary principle were destroyed and charitable hospitals replaced entirely by State-supported and State-controlled hospitals, and, though this may be the ultimate outcome of social legislation, the supporters of the voluntary principle will try to delay it as long as possible.

The British Medical Association has repeatedly expressed the

opinion that there should be a complete separation of any State medical service from charity, and that, though medical practitioners may give their services gratuitously to charitable hospitals, they should be paid for treating any patients entitled to public funds. In the large teaching hospitals connected with medical schools the staffs may perhaps not insist on this or even desire it, but difficulties will certainly arise in many other hospitals through the medical and surgical staffs demanding adequate remuneration for the treatment of insured persons. There appears to be nothing in the Act to prevent the grants from approved societies and Insurance Committees being sufficient to provide such remuneration, and it is not at all unlikely that county and county borough councils and the Treasury may be more inclined to sanction and pay for such expenditure under s. 15 (7) (8) than for any other form of medical benefit.

The influence of the Act on the number of indoor patients in the charitable hospitals will probably be very slight, and of course can only affect at the most one-third of the population from which the patients are drawn. There will probably be some restrictions on the sending of patients to hospital by the doctors on the panel, who will hardly be permitted to get rid of troublesome patients in the way that club doctors do now. Thus the number of indoor patients may actually be reduced. Still more likely is it that the number of the out-patients will be reduced, as every insured person will have free access to some doctor on the panel without resorting to the hospital. The out-patient departments are in urgent need of most radical reform; they are often overcrowded, involving weary waiting by patients before they receive attention; many of the patients are quite unsuitable for hospital treatment, both financially and medically, and could quite as well or better be treated by general practitioners. In the opinion of the British Medical Association the out-patient departments should be confined to emergencies, cases requiring some special form of treatment, and consultations where a second opinion is deemed necessary by the ordinary medical attendant, for which the patient is unable to pay the usual consultation fee. It will be easy to introduce this reform in the case of insured persons, as no hardship will be entailed by refusing, unless they are the bearers of a letter from their doctor on the panel, to give them treatment in the out-patient department.

CHAPTER V

SANATORIUM AND MATERNITY BENEFITS AND PUBLIC HEALTH

PART I

Sanatorium benefit.

SANATORIUM benefit is defined in s. 8 (1) (*b*) as being "subject to the provisions of this Act . . . treatment in sanatoria or other institutions, or otherwise, when suffering from tuberculosis or such other diseases as the Local Government Board with the approval of the Treasury may appoint." It is administered by the Insurance Committees,[1] and, unlike medical benefit, which is obtained by simple application to a doctor on the panel, is only granted on the special recommendation of the Insurance Committee.[2] There is no specific authority given to the Committee to erect sanatoria or other institutions, but the Committee *shall* make arrangements: (1) for institutional treatment, with persons or local authorities having the management of sanatoria or institutions approved by the Local Government Board; or (2) for treatment "otherwise" than in institutions, with persons or local authorities undertaking such treatment in a manner approved by the Local Government Board. No such arrangements, however, can be made with Poor Law Authorities, but the local authorities are empowered to extend their institutional treatment to persons not residing in their own area,[3] so that Insurance Committees may make arrangements for institutional treatment with local authorities in any part of the country. The benefit may also be extended to dependants of the insured,[4] and if the funds be insufficient the county and county borough councils and the Treasury may, if they think fit and agree about it, each pay half the estimated excess.[5] By s. 64, if under any Act of the present

[1] S. 14 (1). [2] S. 16 (3). [3] S. 16 (1) (*a*).
[4] S. 17 (1). [5] S. 17 (2) (3).

session, State grants are available and are made to a county council, that council may be authorised by the Local Government Board to erect sanatoria and other buildings, and the Insurance Committees may then make arrangements with such councils for sanatorium treatment of insured persons belonging to the area of the committees, and may contribute towards the maintenance of the institutions out of money available for sanatorium benefit, and may pay the expenses of conveyance of persons to and from such institutions.[1]

From the above summary it appears that under the head of sanatorium benefit, medical practitioners may be engaged either as—

1. Medical officers of sanatoria or other institutions;
2. Medical officers engaged by local authorities for non-institutional treatment;
3. Proprietors of approved sanatoria or other institutions;
4. Private practitioners for non-institutional treatment, if they undertake the treatment in a manner approved by the Local Government Board.

In the last-named capacity, of course the doctors on the panel may be eligible, and in their agreements with the Insurance Committees it will be very necessary carefully to delimit the duties falling under the head of medical benefit from those falling under sanatorium benefit as the remuneration will be separate.

Notification.

So far as can be gathered until the regulations are issued, insured persons needing any kind of medical treatment will in the first instance go to their doctor on the panel who, if he diagnoses either tuberculosis or any other of the diseases to be prescribed as coming under sanatorium benefit, will at once notify the case to the Insurance Committee. The committee might then accept any future responsibility, either arranging with the same doctor on special terms or in some other way, but the case would not necessarily pass out of the range of medical benefit. By a recent Order of the Local Government Board pulmonary tuberculosis (consumption) is, since January 1st, 1912, added to the list of compulsorily notifiable diseases to be notified to the Medical Officer of Health, but this Order does not include other forms of tuberculosis such as tubercular meningitis, peritonitis, lupus, tubercular disease of the ear (otitis media), skin, bones, joints, larynx or other organs, all of which, as well as consumption, would apparently fall under sanatorium

[1] S. 16 (4).

benefit. It would not appear to be feasible for the Commissioners to limit the word "tuberculosis" to the pulmonary form, as it is certainly in ordinary medical language a generic word covering every disease caused by or associated with the tubercle bacillus. The proviso to s. 16 (3) that no person shall be entitled to sanatorium benefit unless specially recommended by the Insurance Committee may lead to some difficulties, and for this reason again it will be most important that the agreement with doctors on the panel should fully delimit the duties falling under the head of medical benefit.

Sanatorium treatment.

The varieties of treatment used in the different forms of tuberculosis are exceedingly numerous and will entail a heavy cost on the funds. As an indication of the costliness it is only necessary to mention the use of the Finsen light, the X-rays, Ionic medication, the radical mastoid operation, and, more than all, the prolonged and costly treatment in sanatoria. At present the sanatorium treatment of consumption holds the first place and the statistics on the whole are favourable. Its value is due not only to the open air and good food provided, but more especially to the constant and skilled regulation of the amount of rest and exercise, and the instructions given as to preventive measures to be adopted when the patient returns to his usual surroundings. It may be expected that some form of tuberculin treatment will partly replace sanatorium treatment; but, as both forms of treatment ought to be carried out under supervision, institutions of some sort will continue to be necessary. Some fear has been expressed lest the funds should be used on large and expensive buildings which in the course of time, as other forms of treatment are devised, may be useless, but, seeing that the Insurance Committee are not authorised to erect their own sanatoria but are to make arrangements with persons or local authorities having the management of sanatoria, any loss in that direction would hardly fall on the Insurance funds, and in any case local authorities are beginning to find that all the benefit obtained by costly sanatoria can equally be obtained by the erection of shelters or homes within easy reach of towns and costing far less to provide and maintain. At present the chief difficulty in getting cases to sanatoria in the early stage of consumption, when alone the treatment is of much good, is that the patients insist on going to work as long as posssible since there is no provision for their families when wages cease. Some remedy is of course provided for this in the

Act, seeing that the patients will be entitled to sickness benefit of 10*s.* for 26 weeks, in addition to sanatorium benefit.

It is noticeable that the definition of sanatorium benefit is couched in the widest possible terms, and it will be possible in course of time to include special diseases such as cancer, and gradually to extend the scope until it becomes something in the nature of a general hospital benefit, advantage being taken of the provision of s. 17 (2) and (3), under which excess expenditure may be provided by the councils and the Treasury. By the addition of the words "or otherwise" the Insurance Committees may also make arrangements with the Tuberculosis Dispensaries that are now being established in various parts of the country, provided that the dispensaries are approved by the Local Government Board.

Maternity benefit.

Maternity benefit is administered by approved societies for their female members and the wives of their male members and by the Insurance Committees for female deposit contributors and the wives of male deposit contributors,[1] and it is fixed at 30*s.* for each confinement.[2] This sum may be administered either "in cash or otherwise" at the discretion of the societies and committees and the words "or otherwise" apparently enable the societies or committees to see that the money is properly spent. The mothers have a right to choose any doctor or any midwife to attend them[3] and it is possible that the societies and committees may attempt to prescribe the amount of the fees to be paid for such attendance. The provisions for hospital treatment of maternity cases have already been alluded to and various notes on the text of the Act may be referred to under ss. 8 and 18.

By s. 8 (6) it is provided that medical benefit does not include the right to medical treatment and attendance "in respect of a confinement." The word "confinement" will of course require definition. In ordinary medical phraseology, expulsion of the fœtus before a viable age is not called "confinement" but "abortion" or "miscarriage," and the question will arise: Is attendance at an abortion or miscarriage to be treated as part of medical benefit, and is parturition after the viable age alone to be regarded as a confinement, and the attendance a part of maternity benefit? Abortions as a rule cause much greater trouble and anxiety to medical men and greater danger to the woman than a natural confinement, seldom less than a week or often several

[1] Ss. 14 (1) and 18 (1). [2] S. 8 (1) (*e*). [3] S. 18 (1).

weeks' attendance being necessary, and if attendance at an abortion is to be part of medical benefit it will need to be taken into account in fixing the medical fees

Again, what is meant by "in respect of a confinement"? It would be little use to say that illness arising directly or indirectly through a confinement must be regarded as being "in respect of confinement," and therefore must come under the head of maternity benefit, as it is impossible in many cases to decide whether a given disease, such as a pleurisy, is due in any way to the confinement, while other diseases arising directly from confinement usually run a course of some months. It probably matters little to medical men what definitions are given so long as they are clearly and unmistakably set forth in the regulations and not left to every society or committee to define as it likes.

An important addition to the Bill was made during its latest stages in reference to the provision of medical attendance in cases where a midwife has attended the confinement. By the regulations made under the Midwives Act certified midwives attending confinements are bound to advise that medical aid be obtained if certain specified dangers or difficulties arise, such as unusual hæmorrhage, unduly prolonged labour, puerperal fever, ophthalmia in the new born, and so on, and in the case of poor people a fee may be paid to the doctor thus summoned, generally by Boards of Guardians or, in two or three towns only, through the Midwives Supervising Committee of the town council. In Manchester, where the Midwives Act is administered probably as well as anywhere, the council has arranged to pay a fee, varying with the nature of the emergency, to any doctor thus called in by an attending midwife in cases of women whose family income is below an amount varying from 21*s.* to 33*s.* a week, according to the size of the family. In the year 1910, out of 19,212 births, midwives attended 11,015 and had occasion to summon medical assistance in 2,279 cases. In 497 of these, medical men claimed their fees from the Midwives Supervising Committee and fees were actually paid amounting to £425 in 432 cases, the rest either not fulfilling the conditions or having an income above the scale. In all the cases for which fees were not claimed from the committee presumably the patients themselves paid the doctor. In districts where boards of guardians pay these fees as a rule a much lower income limit is fixed, as the guardians hold that they are only responsible for persons of the pauper class, and the

doctors, who from motives of humanity generally respond to a midwife's call, often fail to get any fee. The Insurance Act however now provides that in the case of insured persons entitled to maternity benefit, if a midwife has attended the confinement and in accordance with the rules under the Midwives Act summons the aid of a doctor, "the prescribed fee shall, subject to the regulations of the Commissioners, be recoverable as part of maternity benefit." [1] In one respect this is good for the doctors as they are guaranteed some fee when summoned by a midwife, but on the other hand it offers a distinct inducement to women only to engage a midwife whose fee is less, trusting to chance that a doctor will not be required.

It is a matter for some regret that it has not been found possible to make some provision that there should be entire cessation from work by pregnant women, at any rate for some weeks before confinement, with some provision of an invalidity payment during that time. The high infant mortality in many of our large towns is largely due to faulty antenatal conditions, the mother continuing at work often until the very last day, while in other cases where she is compelled to give up her ordinary work the loss of wages leads to deficient food and other necessaries, which is just as bad as continuance at work. The new German Bill makes it possible to grant a sum of money equal to the maternity allowance for a maximum period of six weeks during pregnancy, and it may be hoped that something of this sort may soon be found possible in England as an additional benefit.[2]

Another common reason for the high infant mortality is the fact that the mothers go back to work as soon as possible after confinement and on that account are unable to suckle their infants. Under the new Swiss insurance law medical attendance or sickness benefit is allowed during six weeks after confinement, the Confederation making a grant of 20 francs for each confinement, and, if a mother suckles her infant for at least four weeks after the end of that period, she receives an extra grant of at least 20 francs (*indemnité d'allaitement*). Here, again, we might well copy the example. Undoubtedly much good work is being done through county and borough councils and by various charitable societies, by means of health visitors and "schools for mothers," but there is still great need for assistance from the State in a matter that so essentially affects the future welfare of the

[1] S. 18 (1). [2] See, however, s. 8 (6).

race. The public can hardly realise what a vast amount of sickness and disablement results from neglect at confinements and during the lying-in period, and if it were for no other reason than to save the insurance funds, it is essential that every attempt should be made to compel approved societies and Insurance Committees to provide the best possible attendance and treatment for maternity cases. It is perhaps a pity that the whole administration of maternity benefit was not put into the hands of the Insurance Committees, as it would then have been possible to allow the Committees to apply to county and county borough councils and the Treasury for contributions for excess expenditure on maternity benefit, in the same way as is provided in the case of medical and sanatorium benefits.

Part II

The Relation of the Public Health Authorities to the Insurance Act

When first the Insurance Bill was introduced the greatest concern was expressed by public health authorities lest there should be interference with their work, or overlapping between the sanitary authorities and the Insurance Committees. The objection was made that the Insurance Committees would have to exercise duties which at present are imposed on the sanitary committees. For instance, the Bill originally provided that the Insurance Committee "shall consider generally the needs of the county or county borough with regard to all questions of public health, and make such reports and recommendations with regard thereto as it may think fit." There is no denying that this did seem at first sight to be encroaching on the duties of the health authorities, and steps were taken by the Government to alter the wording of the Bill so as to make it quite clear that the Insurance Committees would not be able to usurp any of the duties of the health authorities, and would have no power except to make recommendations on matters affecting the health of the insured. Accordingly the Act now provides that any reports and suggestions made by Insurance Committees on the health of the insured and "on the conditions affecting the same" shall be sent to the Commissioners, who will in turn send copies to the councils concerned.[1]

[1] S. 60 (1) (*a*).

Strong objection, too, has been taken to s. 63 ("Excessive sickness") which provides that, if the Insurance Commissioners or an approved society or Insurance Committee allege that there has been excessive sickness among the insured, and that it has been caused by the neglect of a local authority to observe or enforce any public health precautions, a claim for the excess expenditure caused thereby may be sent to the authority, and, if no agreement is arrived at, the insurance authority concerned may appeal to the Secretary of State or the Local Government Board, who may appoint a competent person to hold an inquiry. If he decides that the allegation is true, the local authority shall be then bound to recoup the insurance funds for any loss caused by its default. It was pointed out by the Chancellor of the Exchequer that the only remedy now against a council that neglects its public health duties is by a *mandamus*, which in practice is of very little use, but the object of s. 63 is not simply to enforce future observation of proper sanitary precautions, but to recoup the insurance funds for loss actually sustained through no default of the insured themselves —loss which in some cases might almost make the insurance fund bankrupt or compel an increase of contributions. To meet this a *mandamus* is quite useless. At the same time the provision of s. 63 gives county councils an enormous power, which they hardly possess at present, to compel district councils to carry out their public health duties. The county councils will have representatives on the Insurance Committees to the extent of one-fifth of the total committee, and, through the committees, will be able to bring great pressure to bear on any defaulting local authority by a threat that such authority may have to make up in actual cash any loss caused to the insurance funds by its neglect. Such is the substance of the explanation given by the Chancellor to a deputation that waited on him from the County Councils Association and the Association of Municipal Corporations, and, though it is quite evident that the councils still somewhat resent what they consider to be interference by an outside body, it can hardly be denied that it will prove one of the most effective weapons ever introduced to compel councils, which, either for local or personal reasons, or, as the Chancellor said, "out of sheer stupidity," have refused to exercise their functions, to a right sense of their duty.

Excessive sickness.

With regard to the medical arrangements and any possible overlapping between the duties of the health authorities and the

Overlapping.

Insurance Committees, the position seems to be that public opinion has advanced to the stage when the community has a right to demand that all general measures for the prevention of disease shall be taken up by the State or by local authorities, but opinion has not reached the stage of considering that curative measures should be the duty of the public health authorities, except in certain not sufficiently defined directions, such as in dealing with the infectious diseases where general prevention is only attained by the isolation and cure of the individual.

There is, of course, the inherent difficulty that no sharp line can be drawn between prevention and cure. Nevertheless the two spheres are so different and each by itself so extensive that no one man can set up as an authority in both. It may be added that the County Councils Association and the Association of Municipal Corporations did not suggest that the Insurance Committee should be a committee of the county or borough council, as it would be manifestly unjust to give to the councils the management of funds not provided by the councils, but specially provided by the insured for what is really a business concern of their own. Thus we are not now concerned with any discussion, such as is contained in the Minority Report of the Poor Law Commission, as to whether a unified medical service under the management of county and borough health committees would solve the whole difficulty. We are confined at present to a consideration as to how far the duties of the Insurance Committees conflict with or overlap the functions of the public health authorities, and it may be said broadly that the duty of the Insurance Committee is to provide curative measures for the insured alone, while the functions of the health authorities are preventive measures for the whole community. The prevention of destitution is quite a different thing, as that is the one great aim of the insurance, but for the prevention of disease the insured have a right to demand that the health authorities shall do all that is required.

Taking the three benefits, medical, sanatorium and maternity, a comparison of the work to be done under each by the Insurance Committees with the work in the same spheres undertaken by the health authorities will perhaps best show the relations that exist between the two bodies.

Under medical benefit, the Insurance Committees have to

provide a doctor for domiciliary attendance, together with medicines and appliances for each insured person. Here there is practically no overlapping or conflicting with anything that the health authorities do. What some medical officers of health would like to do is quite a different thing. For infectious diseases, the authorities provide isolation hospitals, carry out disinfection, give advice as to "contact cases," and occasionally lend out nurses for home treatment. In not a few towns they provide antitoxic serum for diphtheria, and the medical officer of health may visit homes to detect contact cases. Many authorities also provide for bacteriological diagnosis of diphtheria, enteric fever and phthisis, without charge to patients, and a few encourage self-drugging by providing, in a wholesale way, diarrhœa medicines in times of epidemics to anyone who likes to ask for them. In two towns, Barry and Widnes, the district councils have provided accident hospitals, while in Liverpool, the Municipal Hospital, nominally only for infectious diseases, admits various other cases. It is true that sanitary authorities may, with the permission of the Local Government Board, provide temporary supplies of medicine and medical attendance for poor persons, though this is in practice rarely done. But in none of these activities is there any more overlapping with the duties of the Insurance Committees under medical benefit than there is at present with the ordinary work of general practitioners, as the Committees have no authority to erect hospitals or undertake any of the duties of sanitation carried out by the health authorities.

Under sanatorium benefit, it might appear as if there would be some overlapping. So far, however, as sanatoria are concerned, the Committees have no authority to erect their own sanatoria, and must simply contract for treatment of the insured with any person or local authority that has the management of a sanatorium. Moreover, by s. 64 the Act distinctly contemplates that sanatoria will be provided by county councils, and, so far from the Insurance Committees competing in any way, they will only have to enter into agreements with the councils, paying for any accommodation given to the insured. This alone is an effective prevention of overlapping. With regard to non-institutional treatment of consumption, again the Committees must contract with persons or local authorities that undertake such treatment,

and the Committees are only concerned with the various measures for preventing the spread of consumption in the same way as are ordinary citizens.

Midwives. Under maternity benefit too there is not the least need for any conflict or overlapping. Two or three authorities, through their Midwives Supervising Committees, pay the fees of medical men summoned to the assistance of midwives under the Midwives Act, but the Local Government Board has definitely discouraged any extension of this, rather urging that Boards of Guardians should undertake it only for the poorer classes. In many towns nurses are sent to give advice in cases of ophthalmia of the new born, and to carry out any treatment ordered by the medical attendant; or to advise that medical aid be obtained or that the child be taken to a hospital, but the treatment itself is not undertaken. One or two town councils have contemplated the establishment of maternity hospitals to prevent women having to go to the poor law. If such hospitals are provided either by charity or by the health authorities for the uninsured, the Insurance Committees would help to support them by sending paying patients from among the insured. The municipal system of health visitors for giving advice to mothers as to the feeding of their infants is now extensively used, especially since the passing of the Notification of Births Act, 1907, but here again there is nothing at variance with any of the duties of the Insurance Committees or the approved societies.

The position of the Medical Officer of Health will in no way be affected. He may, indeed, with the consent of his council and at the request of the Insurance Committee, promote co-operation by attending meetings of the Committee to give advice on health matters.[1] The duty imposed on the Insurance Committees of issuing reports, providing for lectures, and publishing information on questions relating to health,[2] will not conflict with but assist the effect of any similar work of the health authorities, while the presence of the council representatives on the Committees, many of whom will probably be members of the sanitary committees, will further assist in co-ordinating the preventive work of the authorities with the curative work of the Insurance Committees. In short, the only way in which the Insurance Committees could interfere or conflict with the health authorities is by the right of the Committees under s. 63 to claim damages

[1] S. 60. [2] *Ibid.*

in case the authorities fail to carry out their duties under any of the Public Health Acts. The great majority of the county and county borough councils are doing their best, often against almost overwhelming odds, and need fear nothing under s. 63, and if the Insurance Committees, in addition to providing for the cure of disease for the insured, are able to stimulate defaulting health authorities to a higher sense of their duties, the Insurance Act will have proved a most valuable aid in the prevention of disease for the whole community.

CHAPTER VI

FINANCIAL

THE problems of Insurance against sickness and against unemployment are in many respects similar, but the methods of solution which have been adopted under the two Parts of the National Insurance Act show very essential differences. The central fact of Sickness Insurance is the increase in human liability to disease and disablement in advancing years. According to the tables of sickness experience prepared by Messrs. Hardy and Wyatt for the use of Parliament in framing the Insurance Scheme, the normal sickness experience of a boy of sixteen is six and a half days in the year, while that of a man of sixty-nine is thirteen weeks. These tables, which have been deduced from the experience of the Manchester Unity of Oddfellows during the years 1893–97 show the highest rate of sickness for any friendly society yet recorded, and may be taken as fairly typical of the probable sickness experience in a national scheme, containing lives much less carefully selected than those included in the old friendly societies.

Every insurance scheme must reckon with the fact that members who have passed middle age will draw on the funds of their society very much more heavily than the young. To meet these heavy calls, societies have in the past adopted two alternative systems of operation. The first is that known as the "dividing-out-system," in which the total contributions in every year substantially balance the benefits paid out. There is no reserve fund, but a small balance is carried over from year to year to meet immediate calls. In this system, naturally, the young man pays for the old man of a previous generation. As time goes on, the demands made by the young man upon the funds increase with increasing age, until he is himself a member of the generation

passing away, drawing heavily upon his society, and himself a burden upon the generation that succeeds him. He draws, in fact, at the expense of the next generation precisely what he contributed when young to the generation before. In other words, he gets back in old age what he invested in youth, but without interest.

The continued existence of a society working upon the dividing-out basis depends on the influx of new members. The society has no reserve and can meet its liability to its old members only while it can secure new entrants whose contributions exceed their claims. An undue preponderance of middle aged members means a large subscription, which naturally discourages a young man from joining, in view of the fact that it is open to him always to form a new society without old members and with a very low rate of contribution. The result, as experience shows, is the collapse of many a sick club, through the impossibility of attracting young entrants and so renewing its youth, and its collapse is attended by the loss to its contributors of the benefits for which they have, in a sense, paid during past years. In a national scheme, however, where the continued influx of young members is secured by the compulsory character of the scheme, it is possible to guarantee the benefits upon a dividing-out basis. Every person entering into insurance can be secure of his benefits. He can know that in old age he will get back what he invested, or what others invested on his behalf during youth, but that he will get it back without interest. Such a scheme would be in fact a forced loan upon which no interest is paid. Of course, it is possible for the State, by making a contribution of something more than the interest so lost, to do away with the personal grievance of the member insured, but a State contribution cannot mitigate the unsound economics of any such scheme.

The alternative basis is the "accumulative" one which has been adopted by all the great friendly societies and by the promoters of the National Insurance Act. On this system a young man does not pay for the old men of a prior generation. He pays directly for his own old age and that of his coevals. The balance of the contributions, which in the case of young members are, on the average, much larger than the benefits which they draw, is paid into the reserve fund of the society and there accumulated, until the generation which contributed it requires to

The accumulative basis.

draw upon the funds. It may be said broadly, that in the dividing-out scheme the operations of each year are in water-tight compartments, whereas in the accumulative scheme the men of each generation are similarly separated, so that the old age of any one generation is a burden, not upon its successors but upon its own youth; the old men drawing what they themselves contributed, and drawing it with interest.

The accumulative system necessarily involves the possession by each society of a reserve fund equal at any moment to the total liabilities of the society at that time in respect of its members' benefits. Assuming, for instance, that in the average case a man joining at 16 pays, until he reaches 45, more money into the society than he draws out, and draws out, after reaching 45, more than he pays in, it is clear that the society must maintain in respect of him a reserve which will rise slowly till it reaches a maximum level at or about the age of 45, and will then decline as the expectation of life diminishes with the consequent expectation of benefits from the Society.

Reserves. Now, the State scheme starts under the handicap of having no reserve already laid by. The simple solution adopted in Germany has been the economically unsatisfactory one of putting the whole Insurance scheme upon a dividing-out basis; the result being that the insured worker does not get what he pays for. If the accumulative basis is to be adopted in England, a reserve fund must be provided.

The National Insurance Scheme takes in some ten millions of persons hitherto not insured, and offers medical benefit, sick and disablement pay, sanatorium benefit, and maternity benefit. So far as sanatorium and maternity benefits are concerned, no reserve fund is necessary. The young man is more liable to consumption and more likely to claim maternity benefit than the old. Adopting, as the actuaries have adopted, a flat rate of contribution in respect of these benefits, it follows that the old man pays for sanatorium and maternity benefits contributions which the society has already discounted by undertaking a liability for benefits during the years that are past. In other words, the reserve necessary in respect of maternity, and in a less degree, of sanatorium benefit is generally speaking negative, and must be deducted from the heavy reserve required for sickness and disablement pay. Owing, therefore, to the nature of the benefits given, the State scheme will require much smaller reserves than

are needed by friendly societies giving the ordinary sickness and death benefits at the present day.

The practice of friendly societies and of the medical profession in the past, has been to arrange contract work at a flat rate throughout life, in spite of the extra labour involved by the old age of the patient. It may be that this practice will continue, and that the charge made by doctors will be a flat capitation fee, taking no account of variations in age, and in this case, clearly, no reserve is necessary in respect of medical benefit. Such a flat rate has been assumed by the actuaries.

The State contribution.

Under the National Insurance Act, the Government undertakes the payment of two-ninths of all benefits, and two-ninths of the cost of management expenses.[1] The reserve fund in respect of this two-ninths is in the tax-payer's pocket. It would of course be possible to pay the Government contribution at the same time as the contributions by other persons and let them accumulate at 3 per cent. or whatever interest may be obtainable in the investment account. But since money is for the most part worth more than 3 per cent. to the tax-payer, it would be very doubtful finance to compel him to pay at the moment when the insured person pays; in other words, to compel him to invest in Consols when possibly he prefers to invest in his own business. There is, therefore, no reserve fund in respect of the two-ninths borne by the State. The State simply undertakes to pay ultimately 2*d.* for every 7*d.* paid in contributions, and if the State prefers to defer its payment on condition of paying with interest, that is a matter of no concern to the contributor and very little to the actuary. It is necessary, however, to accumulate a reserve fund in respect of the seven-ninths of the benefits for which the society is liable. The Government Actuaries have estimated the necessary reserve at some 66 million pounds, or just over four times the total annual contributions which the societies will have available for the payment of benefits. The reserve fund being four years' contributions, the operation is substantially this: that the whole contributions are paid in to that fund, are drawn just over four years later for the payment of benefits and have in the meantime accumulated at the rate of 3 per cent., or possibly a trifle more; so that 7*d.* paid in becomes 8*d.* paid out. It is

[1] S. 3.

of that odd penny that the contributor is deprived by the German or dividing-out system.

The actuarial estimates.

We can now proceed to estimate the cost and value of the benefits offered by the Act. The contribution in respect of each insured person is 7*d.* a week, together with a grant out of taxation equal to two-ninths of the whole cost of benefits and of their administration;[1] but for some eighteen years, as will be seen below, a sum equal to the Parliamentary grant must be set aside for the accumulation of a reserve fund in order to provide benefits for those entering above the age of seventeen at the same rate as for those entering at sixteen. For the first eighteen years of insurance, therefore, the person entering into insurance at the age of sixteen gets no direct benefit from the Parliamentary grant, but the whole contribution of sevenpence provided by himself and his employer is available to pay for his benefits and the cost of their administration.

The position is, therefore, that an approved society under the State scheme can offer to a person entering at the age of sixteen such benefits as it could offer to him if he joined at the same age, paying a weekly contribution of sevenpence, and apart from State Insurance; and the benefits set out in the Act have been so designed that the cost of providing them for a boy of sixteen shall fall within the 7*d.* contribution, leaving indeed a margin of safety. It is true that, by virtue of the State grant, a society can offer the same benefits to a man of more advanced age, though it may cost as much as 1*s.* 4*d.* a week to provide them; but the cost of benefits in these cases is relevant only when the amount of the State grant and of the necessary reserves is to be computed; the fundamental problem of the insurance scheme is to assess the cost of providing such benefits for a boy of sixteen and then to provide a contribution sufficient to cover the cost.

Margin.

The solution of this problem adopted in the Act is explained by the reports presented by the Treasury actuaries, Messrs. Hardy and Wyatt,[2] which deserve careful consideration. The actuaries have in the first place adopted sickness tables derived from the Manchester Unity experience by Mr. A. W. Watson. In those tables incapacity arising from industrial accidents and diseases within the Workmen's Compensation Act is treated as sickness, and is believed by the actuaries to represent some ten per cent. of the whole. Since, however, benefit is not payable

[1] S. 3.

[2] (Cd. 5681) and (Cd. 5983) of 1911.

in respect of such incapacity under the Act, we have here at the outset a margin of safety of some ten per cent. in the estimated cost of the benefits, to cover bad lives admitted by approved societies and the increase of malingering which is almost inevitable in a statutory scheme. To estimate the present value of these benefits the actuaries have adopted a three per cent. interest table. The Act, however, provides that something more than half of the total reserve funds shall be invested by or under the direction of the approved societies,[1] and therefore probably at a rate of interest considerably exceeding three per cent.; the balance is to be invested, when possible, in loans under the Housing of the Working Classes Acts,[2] the prevailing rate of interest from which is more than three per cent. We have here, therefore, a further margin of safety in the calculations.

Allocation of contributions.

The actuaries have further assumed that contributions will not be paid during sickness or unemployment, and that the average number of payments will therefore be forty-eight in each year. Under the Act contributions are not payable during sickness, but they are payable in unemployment, or alternatively benefits are reduced when unemployment reaches four weeks in the year. The estimate that forty-eight contributions on the average will be paid, or a corresponding reduction made in benefits, is therefore probably a cautious one, and it is fair to take the contribution of 7*d.* per week as equivalent to 28*s.* in the year.

Assuming this basis of calculation the actuaries estimate the contributions necessary to provide the various benefits for a person entering into insurance at sixteen as follows, the cost of medical benefit being taken as 6*s.* net per annum :—

Benefit.	Necessary contribution in pence per week.		Net produce of contribution per annum.	
	Men.	Women.	Men.	Women.
	d.	*d.*	£ *s.* *d.*	£ *s.* *d.*
Medical	1·51	1·51	6 0	6 0
Sanatorium ...	·32	·32	1 3	1 3
Sickness	2·39	1·74	9 6½	6 11½
Disablement ...	·78	·81	3 1½	3 3
Maternity	·66	·17	2 8	8½
Administration ...	·92	·92	3 8	3 8
Total	6·58	5·47	1 6 3	1 1 10
Margin	·42	·53	1 9	2 2
Contribution ...	7*d.*	6*d.*	1 8 0	1 4 0

[1] S. 55 (1) (*b*).

[2] S. 54 (2).

Medical benefit.

The allocation of *1s. 3d.* per annum for sanatorium benefits is statutory,[1] any additional cost being chargeable to the Treasury and to the county or county borough involved, with the consent of the authorities so charged. Experience cannot therefore falsify the estimate of this charge, and the treatment accorded must be accommodated to the funds available. The Act does not, however, establish in any way the cost of medical benefit, and the estimate of *6s.* per annum is purely speculative.[2] Assuming that the large margins above referred to, in connexion with the charges for other benefits, are sufficient, there is therefore a sum of *1s. 9d.* per head per annum for men and *2s. 2d.* per head per annum for women available either for the provision of additional benefits or for making good any deficiency in the medical expenditure; and since, under s. 15 (6), the sums required for providing the cost of medical benefit, which is the first benefit under the Act, would appear to be a first charge upon the funds of approved societies, the medical profession may be able to secure a part of this margin, even if the result is a deficiency in the societies' funds. The Treasury actuaries have strongly urged that the margins ought not to be the subject of such trespass, and s. 15 (8) provides a means of supplementing the sums assigned for medical benefit out of rates and taxes; but even without this supplement, it may be found that *7s.* per annum for men and *7s. 6d.* for women might be allocated for the payment of medical fees and the purchase of drugs without increasing the total contributions.

Reserve values.

Turn now to the problem of providing these reserves. That problem is two-fold. In the first place, there is the mere accumulation of capital sufficient for the total reserve fund; the finding of 66 millions of money. On the other hand, there is the division of the reserve amongst the persons entering insurance during the year 1912 and putting thereby a charge upon the societies. For the simple accumulation, provision is made under section 55 (3), by taking from every contribution the sum of one penny and five-ninths for the purpose of reserve, this being two-ninths of the whole contribution, and the Government subsidising the scheme to the extent of two-ninths of the whole cost. It is clear that, quite apart from any reserve credited to his society, there is *7d.* a week available for everyone for the payment of benefits. A boy of 16, in fact, gets such benefits as a good society could offer

[1] S. 16 (3). [2] S. 15 (6).

him in return for a 7*d.* contribution. But it is proposed that there shall be a flat rate of contribution for all insured persons except voluntary contributors joining in the first instance above the age of 45,[1] or later, at any age, and it is proposed to give a flat rate of benefit to all persons, excepting those above the age of 50 on entering into insurance,[2] and those entering in any subsequent years above the age of 17, and those under 21.[3]

Seeing then that a friendly society receives contributions amounting to 5 4-9ths pence per week from every member and undertakes to give to every member the full benefits which could be given for 7*d.* to a boy of 16, paying seven-ninths of the cost out of its own funds, it is clear that the society undertakes a liability, which, rising from nothing at the age of 17, reaches a maximum at or near 45 and then falls again with the decreasing expectation of life.

We are now in a position to discuss the meaning of certain technical terms in the Act.

The liability of a society to an insured person is called his "transfer value"[4] and represents the amount of reserve fund which the society should have laid by in respect of him in order to achieve actuarial solvency. The transfer value of a member, therefore, varies from year to year. On a member resigning from one society, or being expelled and joining another, his transfer value is carried from one society to the other in the books of the Insurance Commissioners.

The "Reserve Value" of an insured person is the liability which a society undertakes by accepting him at the moment of his entry into insurance.[5]

At that time, therefore, his reserve value and his transfer value are the same, but the reserve value is a fixed quantity depending only on his age when he entered insurance, and his transfer value, starting at that same quantity, varies from year to year, increasing or diminishing according to his age. There are a few special exceptions, such as women married when the Act commenced, but in general it is impossible to say, until the Insurance Commissioners have announced the principles upon which contributions under s. 5 (1) and benefits under s. 9 (4) are to be computed, whether, if a man enters into insurance after twelve months from the passing of the Act he will have any reserve value, or will pay contributions equal to seven-ninths of the value of his

[1] S. 5 (1). [2] S. 9 (3). [3] S. 9 (4). [4] S. 31 (1). [5] S. 55 (1).

insurance, so that the society will undertake no liability in respect of him. Roughly speaking, it may be said that with the exception of widows' reserve values and of small sums which may be assigned to persons entering into insurance under s. 9 (4) or s. 5 (1), every worker has his reserve value assigned to him during the year 1912 and carries that with him through life.

The equalisation of contributions and of benefits is provided for by crediting to each society at the outset the full reserve value of every insured person who is or becomes a member. These are, of course, mere paper credits, but the society receives from the National Health Insurance Fund real interest upon this imaginary reserve. The function of the penny and five-ninths deducted from contributions is to convert the imaginary reserve into a real one. The penny and five-ninths is periodically assigned to the various societies in proportion to the reserve values standing to their credit, and as the real reserve is given to them so the imaginary reserve is written off,[1] and it is expected by Messrs. Hardy and Wyatt that the actual process of writing off will be accomplished in some eighteen years.

Credits and Debits.

The process of crediting and debiting established by sections 54, 55, and 56 of the Act is really much simpler than it appears on the surface.

In the first place, all contributions are paid through the Post Office, or otherwise, by the insured persons or their employers[2] into the National Health Insurance Fund,[3] and such payments will be evidenced by stamps upon the insured person's card. Money paid on behalf of a deposit contributor is credited to him and to him only in the Post Office; but the money paid by a society member, except in special cases,[4] is divided into two parts: seven-ninths remaining in the general fund at the call of societies for benefits and expenses, and two-ninths going into a special fund for reserve values.

The next step is the assigning of proper credits to approved societies. While the Commissioners are handling and dividing the money, the approved society, once a quarter, collects and enters up the cards of its members, noting the number of stamps representing the contributions paid, and the society will thereupon make a claim upon the Insurance Commissioners in respect of the contributions so paid on behalf of its members.[5] This claim

[1] S. 55 (4). [2] S. 4 (2). [3] S. 54 (1).
[4] See note to s. 55 (3). [5] S. 56 (1) (*a*).

will no doubt be substantiated by sending up the stamped cards.

Then comes the division of the moneys standing in the National Health Fund. One part of these moneys represents seven-ninths of the contributions, less benefits and working expenses paid out and debited to the Societies. But there is another part of the National Health Fund representing two-ninths of the contribution assigned to the reduction of reserve values.[1] Under this fund, interest is paid on reserve values outstanding, and the balance is then divided among approved societies in proportion to these reserve values then outstanding, and the amount of the reserve values is written off accordingly.[2] It will be seen therefore that the whole of the contributions paid in are credited within a quarter or other short period to the various approved societies: but whereas seven-ninths of those contributions are divided among the societies in proportion to their contributing members, the other two-ninths are divided upon an age distribution and in proportion to the reserve values outstanding.

Having in this way ascertained the whole net balance of a society, whether it arises from the reserve values fund or from the drawing account, this balance is divided into two parts; four-sevenths, being in fact the remainder of the insured person's contribution after paying benefits, is handed over to the society[3] and is by them invested in Trustee Stocks[4] (the society gains or loses by the fluctuations of these stocks upon the market); the other three-sevenths, being in like manner the balance of the employer's contribution, is handed to the National Debt Commissioners and by them controlled. This is simply a deposit account for the society which draws a fixed rate of interest and is not interested in the fluctuation of the securities in which the money is invested.

Clearly there is no National Reserve Fund at any time. There is only a national drawing account with a working balance. The whole of the reserve fund proper is always credited to the different societies, and so far as four-sevenths of it are concerned, is under the immediate control of those societies. These reserves begin as a paper credit and are gradually transmuted into a cash reserve. The process of transmutation will be simultaneously completed in every society in England. Owing to the separation

[1] S. 55 (2). [2] S. 55 (4). [3] S. 56 (1) (*b*). [4] S. 56 (2).

of funds, the completion of the process will not necessarily be achieved at the same time in Scotland, Ireland, or Wales, but so soon as it is completed it will no longer be necessary to deduct a penny and five-ninths from the contributions in order to fill up this reserve. The result will naturally be an extension of benefits, and consequently an extension of the State grant of two-ninths of the benefits and expenses; but any increase in benefit means an increase in the liability of each society to its members, and consequently an increase in the necessary reserves, so that it will be necessary to repeat the process on a smaller scale, crediting again paper reserve values, transmuting them again into gold by the magic of a penny and five-ninths, or some similar proportion of the contributions.

As has been pointed out, the benefits for the first eighteen years are calculated upon a 7*d.* basis. They are those which a good friendly society could give to a man joining at sixteen, and the reserve fund represents seven-ninths of 7*d.* Ultimately the benefits can be extended from a 7*d.* to a 9*d.* basis, but the whole extension cannot take place in eighteen years' time, because the 9*d.* benefits, of which 2*d.* is paid by the State, require not only a 7*d.* contribution, but a 7*d.* reserve, and it is therefore anticipated that a partial extension of benefit in eighteen years, together with a further provision for accumulation, will be followed at some subsequent period which need not be long deferred by the extension to the full 9*d.* basis of insurance.

Unemployment Insurance.

The scheme for Unemployment Insurance presents no special actuarial problem such as is offered by the reserve fund under Part I. Indeed, the basis for such actuarial calculations as have been made under Part II is of an extremely sketchy character. But Unemployment Insurance does not present the problem necessarily associated with the increase of sickness in advancing years. There is little doubt that on the whole the normal rate of unemployment does increase as a man gets older, and that some provision might reasonably be made for accumulation of reserves in respect of men entitled to unemployment benefit. No such provision is however made, nor are there any available data from which the amount of such provision may be computed. The National Unemployment Fund is put frankly upon a

"dividing-out" basis; the object of the Act is to balance contributions and benefits. Of course there must be at any given time in the fund a substantial cash balance to meet the heavy calls which arise in a period of unemployment, and the amount of this balance will necessarily depend on the national prosperity during the first year after the unemployment scheme comes into operation.

Distress.

It is clear that although the contributions may be adequate in the long run to provide the benefits, yet a period of bad trade and heavy drawings coming early in the history of the scheme, and before a substantial fund has been accumulated, may involve temporary insolvency. To meet such a case, provision has been made for a Treasury advance of not more than three million pounds to the Unemployment Fund,[1] and also for a temporary levy payable alike by masters and men and not exceeding a charge of a penny per week on each.[2] It is clearly necessary that some such provision should be made, as a spell of unemployment comparable with that of two years ago, involving a levy of 2*s.* 6*d.* a week upon members of the Joiners' Union, might very well wreck any such scheme at the outset but for temporary assistance. Apart, however, from such a crisis power is given to the Board of Trade to make, with the consent of the Treasury, a permanent change in the benefits and contributions, provided that the contributions may not be raised by more than 2*d.* a week, of which one-half is payable by the worker and one-half by the employer.[3] Permanent changes of this character in the contributions can be made only by special order and not more frequently than once in five years, but the Board of Trade has power to vary the benefits between the limits of 6*s* and 8*s.*, or by special order beyond those limits.[4] It is however worth enquiring what rate of unemployment would be sufficient to overburden the finances of the scheme created by Part II.

The amount which can be drawn by any workman is limited in two ways. He cannot in any case draw more than fifteen weeks' benefit in the year, nor can he draw more than one week's benefit in respect of every five contributions paid by him.[5] There is a third limit, of a kind, set up by the requirement that he must within five years have worked for six months in an insured trade.[6]

[1] S. 93 (1).
[2] S. 93 (2).
[3] S. 102.
[4] Seventh Schedule.
[5] Seventh Schedule.
[6] S. 86 (1).

This requirement will clearly operate as a limitation upon drawing in the case of a man, who, after a long life of steady employment, retires or adopts another trade or becomes a master; and he will necessarily leave in the account a certain amount of money standing, in a sense, to his credit, and benefiting the other members of the scheme.

The contributions available are: 2½*d.* from the master, 2½*d.* from the man, and one and two-thirds pence from the State (six and two-thirds pence in all).[1]

The Board of Trade undertakes to manage the scheme at a cost of two-thirds of a penny as a maximum, drawing, if necessary, further expenses out of general taxation, and setting aside expense in every contribution for the purpose of paying benefits.[2] Clearly therefore, it is possible to pay one week's benefit at 7*s.* for every fourteen contributions received. Now, setting aside the fact that the persons most liable to unemployment are most likely to run over the limits set by the Act and exceed their right to benefit, so that there is bound to be even in insured trades a good deal of uninsured unemployment, and assuming that benefit is paid for all unemployment after the first week, it is very easy to see in what case at what rate of unemployment the benefits and contributions balance. Benefit is not paid for the first week of unemployment. If, therefore, x be the number of weeks on benefit, the number of weeks during which contributions are paid will be $51 - x$, and we have therefore:

$51 - x = 14x$; or, $x = 3.4$. The result is that an average of 4·4 weeks of unemployment would be sufficient, if every person had an unlimited power of drawing benefit, to bring the Unemployment Fund to the verge of bankruptcy. This would correspond to an unemployment ratio of 8·46%. The average unemployed rate, as estimated by Mr. Thomas G. Acland, on behalf of the Board of Trade, is 8·6% per annum, equivalent to 26·8 days of unemployment in the year; but the basis for this estimate is of a somewhat doubtful description. It must be pointed out, however, that it is by no means fair to infer that the contributions taken under Part II of this Act are inadequate. It must be remembered that the high unemployed rate is built up by general labourers and men of inferior skill, who experience

[1] s. 85 (2) (6), Eighth Schedule.

[2] s. 89 (2), proviso.

many weeks of unemployment during the year and who during many of those weeks will be excluded from benefit.

It is interesting to notice the way in which the 7*s.* of unemployment benefit is built up. It consists really of fourteen contributions of sixpence, one penny of which, or one-sixth, is provided by the State, five-twelfths by the employer, and five-twelfths by the workman. The workman himself, therefore, contributes 2*s.* 11*d.* towards his 7*s.* benefit, the State bearing the whole cost of working. This becomes of interest when it is sought to estimate the relief to trade unions arising from their undertaking to administer the State Insurance Scheme after receiving a contribution limited to three fourths of the benefit which they pay. They will no doubt find it necessary to reduce their members' subscriptions by the 2½*d.* paid to the State, and power to do this is given by s. 105 (2). Since this 2½*d.* is represented by 2*s.* 11*d.* of the benefit, the real grant from the Unemployment Fund to the trade union is 4*s.* 1*d.*, made up in part by Parliamentary grant and in part by the employer. In order to receive this grant, the union must pay a total benefit of at least 9*s.* 4*d.*, being: 2*s.* 4*d.* from its own funds and members' subscriptions directly paid to it; 2*s.* 11*d.* from the members' contribution of 2½*d.* to the State fund, and 4*s.* 1*d.* from the employers' and State contributions.

This 4*s.* 1*d.*, which may be taken as equivalent to the contribution of 3½*d.* per week, is the true measure of relief to the funds, of a trade union which is already paying unemployed benefit at any rate higher than 9*s.* 4*d.* a week, assuming that no additional burden of contribution is laid upon the workman. Every union can obtain such relief at the cost of making good the extra 2*s.* 4*d* required out of their own moneys.

It is not necessary to deal here with the further relief accorded to trade unions, whether in insured trades or not, by the payment of one-sixth of the benefits other than State benefits paid by them to unemployed members. A note dealing with the matter will be found under Section 106.

The cost of the State contribution to the unemployment scheme is estimated at, roughly, £660,000 per annum. Power is taken to extend the scheme to other trades, but so that the cost shall not be increased above one million pounds per annum, a limitation which is likely very closely to restrict the possible extension. There does, however, appear to be some ground for hoping that the normal annual unemployed rate may be to some extent

reduced by the payment of unemployed benefit, which, by keeping the unemployed worker in the market, even to a small extent, as a purchaser, may do something to mitigate the spread of unemployment into other trades and their reaction upon his own. In the event of any appreciable diminution in the rate of unemployment in insured trades, a substantial extension of the scheme will be not only possible, but in all probability, most heartily welcome.

NATIONAL INSURANCE ACT

1911

[1 & 2 Geo. 5, Ch. 55]

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National Health Insurance

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SCHEDULES.

NATIONAL INSURANCE ACT, 1911.

[1 & 2 Geo. 5. Ch. 55.]

An Act to provide for Insurance against Loss of Health and for the Prevention and Cure of Sickness and for Insurance against Unemployment, and for purposes incidental thereto. A.D. 1911

[16th December 1911.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

NATIONAL HEALTH INSURANCE.

Insured Persons.

Insured persons.

1.—(1) Subject to the provisions of this Act, all persons of the age of sixteen and upwards who are employed within the meaning of this Part of this Act shall be, and any such persons who are not so employed but who possess the qualifications hereinafter mentioned may be, insured in manner provided in this Part of this Act, and all persons so insured

S. 1 (1) (in this Act called "insured persons") shall be entitled in the manner and subject to the conditions provided in this Act to the benefits in respect of health insurance and prevention of sickness conferred by this Part of this Act.

"**Sixteen and upwards.**"—See the definition in s. 79 *infra*, a person attains the age of sixteen on the commencement of the sixteenth anniversary of the day of his birth.

"**Employed.**"—See subs. (2) and the First Schedule.

"**Shall be . . . . insured.**"—As to the position of a person so employed who has not in fact been insured, in the sense that no contributions have been paid in respect of him, see notes to ss. 69 and 70.

"**The qualifications.**"—See subs. (3).

"**The benefits.**"—For a general statement of them see s. 8 (1) *infra*.

(2) The persons employed within the meaning of this part of this Act (in this Act referred to as "employed contributors") shall include all persons of either sex, whether British subjects or not, who are engaged in any of the employments specified in Part I. of the First Schedule to this Act, not being employments specified in Part II. of that Schedule:

"**Either sex.**"—This would be implied, Interpretation Act 1889, s. 1. For special provisions relating to women, see ss. 3, 8 (1) (*e*), (4), (6), (8) (*d*), 10 (4) (*b*), 14 (2) (*c*), (*f*), 18, 19, 20, 41, 44, 45 (3) 46 (2) (iii), 47 (4) (*b*), (*c*), 58, 59 (2) (ii), 81 (8) (*b*), (11), (18), the First Schedule, Part II. (*j*), (*l*), the Second, Fourth, and Fifth Schedules.

Women, married or single, are admissible as members of friendly and other societies (see the Friendly Societies Act, 1896, s. 8 (1) and the Married Women's Property Act, 1882, ss. 6–10, 17).

"**Whether British subject or not.**"—Aliens are included, but as to their benefits and other special provisions relating to them, see ss. 32, 45, 48 (2), (6).

British subjects are: (1) any person born within the King's dominions or on a British ship on the high seas, who has not (*a*) being born of foreign parents made a declaration of alienage under the Naturalisation Act, 1870, ss. 3, 4, or (*b*) become a naturalised citizen of a foreign State at peace with this country (see *R.* v. *Lynch*, 1903, 1K.B. 444). (2) Any person born abroad whose father was a natural born British subject at the date of birth (4 Geo. 2, c. 21, s. 1).

(3) The son of such a person under the same condition (13 Geo. 3, c. 21, s. 1)—but not to any further generations (*De Geer* v. *Stone*, 22 Ch. D. 243). (4) An alien naturalised under the Act of 1870, after five years' residence and on payment of £5 (see *re Gally*, 45 L.J.P. 107). (5) An alien who has obtained letters of denization from the Crown. (6) The child of a naturalised British subject, who while an infant has come to reside with the naturalised parent in the United Kingdom. (7) An alien woman who marries a British subject. (8) A female British subject who marries an alien and becomes a widow: under the Act of 1870, s. 10 (2) she is an alien, but not for the purposes of this Act, s. 45 (3) *infra*. (9) A person naturalised under any Colonial Statute. See the Old Age Pensions Acts 1908 and 1911, and the Regulations of Aug. 20th, 1908, Schedule II. S. 1 (2) —

"**Are engaged.**"—As to the conditions under which a person once employed will cease to be deemed to be employed, see the definition in s. 79 *infra*.

"**The employments specified**":—

FIRST SCHEDULE.

Part I.

Employments within the Meaning of Part I. of this Act relating to Health Insurance.

(*a*) Employment in the United Kingdom under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise, or, except in the case of a contract of apprenticeship, without any money payment.

"**In the United Kingdom**," and including the Channel Islands and the Isle of Man [Interpretation Act, 1889, s. 18 (1)]. The employment must clearly not only arise, but continue to be, in the United Kingdom. Thus a workman employed by a British firm sent to do a job abroad, or a servant travelling abroad with his master, is during the time when he is abroad outside the Act. His employer will be under no obligation to pay contributions in respect of him (see s. 4), and if he does not pay them himself he will fall into arrear (see s. 10). As to his position with regard to benefits at this time, see s. 8 (4).

"**Under any contract of service.**"—"A servant is one who for consideration agrees to work subject to the orders of another." (MacDonell's *Law of Master and Servant*, 2nd ed., p. 7.) The difficulties of distinguishing service from bailment, apprenticeship, work and labour, partnership, agency and other relations are notorious. The further difficulty of deciding who is the employer of a particular servant, which has given rise to much litigation, is not strictly relevant to this Schedule (see s. 4), but is best discussed with it. In general a

S. 1 (2) contract of service exists if the servant is bound (*a*) personally to execute work, (*b*) for another, (*c*) exclusively, (*d*) in return for wages or other remuneration, (*e*) acting under the orders of that other. (*c*) is not applicable to the wording here adopted ("whether under one or more employers"); (*a*) and (*e*) remain the most useful and decisive tests.

The wording adopted here should be compared with the following statutes, but it must be remembered that the nature of the employment is in this paragraph irrelevant. (1) The Employers and Workmen Act, 1875, s. 10 (adopted in the Truck Acts and in the Employers' Liability Act, 1880):—

"'*Workman' means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, has entered into or works* under a contract with an employer, whether the contract be . . . express or implied, oral or in writing, and be a contract of service *or a contract personally to execute any work or labour.*" (It will be noticed that the words in italics are omitted from the present paragraph.)

The omission of the words "has entered into" has the effect of making the employment rather than the contract the primary test, and excluding cases where the contract is executory, *i.e.*, where the employment, though agreed upon, has not actually commenced. (See *Whitbread* v. *Arnold*, 99 L.T. 103.)

"Employment . . . under" is substantially equivalent to "works under." [See *Marrow* v. *Flimby &c. Co., Ld.*, 1898, 2 Q.B. 588.]

"It seems to me that the words 'or works under a contract with an employer' were inserted into the section to meet the case of a workman who has not contracted directly with an employer, but has been engaged by an agent of the employer—viz., a 'buttyman' or 'ganger,' or to meet the case of an apprentice or other similar cases." (Per A. L. Smith, L.J. *ib.*; see also *Fitzpatrick* v. *Evans*, 1902, 1 K.B. 505: men working for a contractor sinking shafts at a colliery, although the colliery manager is entitled to give certain directions as to the work, are not the colliery company's servants.)

It is clear that the men engaged in this manner by the "buttyman," "ganger," and by any other person more properly described as a "sub contractor" are within the present definition, whatever their employer may be [see the Third Schedule (6) under s. 4 (2) *infra*], but the position of the sub-contractor himself is much more difficult to decide. The omission of the words "or a contract personally to execute any work or labour" will probably exclude numbers of men in such positions, but the following are examples of cases included in "contract of service" under previous Acts which did not contain those words:—

(*a*) An employer engaged A to work for him by piece-work, B by daily wages to assist A; B was paid by A out of the proceeds of his piece-work; held that both A and B were the servants of the employer, although A paid B his wages. (*Willett* v. *Boote*, 30 L.J.M.C. 6.)

(*b*) Seven artisans agreed to complete a ship for a ship-builder; they were bound to work exclusively for him, but might employ skilled and unskilled men to help them. They were held to be servants of the ship-builder. (*Lawrence* v. *Todd*, 32 L.J.M.C. 238.)

(*c*) "Butty-colliers" are the servants of the colliery company. (*Brown* v. *Butterley Coal Co.*, 53 L.T. 964.)

(*d*) Three men contracted to unload a ship and employed three others, but they were bound to obey the dock company's foreman. (*Ruth* v. *Surrey Commercial Dock*, 8 T.L.R. 116.) S. 1 (2) —

But the following were not included under those statutes :—

(*a*) A man who contracted to make a road for a fixed sum. (*Lancaster* v. *Greaves*, 9 B. & C. 628.)

(*b*) Master stevedores, employing their own men and tackle, are not servants of the ship-owners. (*Cameron* v. *Nystrom*, 1893, A.C. 308.)

(*c*) Men who contracted to weave certain pieces of silk goods at certain fixed prices. "The same person may contract to work for many others, and cannot with any propriety be said to have contracted to serve each of them." (*Hardy* v. *Ryle*, 9 B. & C. 603.)

(*d*) A man contracted to print certain pieces of woollen cotton goods, held not a contract of service because it was piece-work, and the workman might be working at the same time for divers other persons. (*Exp. Johnson*, 7 Dowl. 702.)

The last two cases would, however, come within the present paragraph, owing to the words "whether under one or more employers," and "by the piece," *infra*.

The following were probably included only in virtue of the words "personally to execute, &c." :—

(*a*) A potter's printer, paid by the piece and finding his own "transferrers." (*Grainger* v. *Aynsley*, 6 Q.B.D. 182.)

(*b*) A slater who contracted for a builder to slate the roofs of houses by the piece ; he was at liberty to employ men to help him. (*Stuart* v. *Evans*, 49 L.T. 138 ; and see *Bowen* v. *Hall*, 6 Q.B.D. 333, a contract to find all labour for a special class of brickmaking at fixed piece-rates, and to work exclusively for the employer for five years, is a contract for personal service, though there was no relation of master and servant.)

And the following were excluded even with the aid of those words :—

(*a*) A man who contracts to find labour to make bricks at a fixed price per thousand, is not within the definition unless he is actually bound by the contract to give his personal labour. (*Ingram* v. *Barnes*, 7 E. & B. 115.)

(*b*) "Clippers" who take lace from the manufacturers and take it home to be clipped, being at liberty to do it themselves, get it done by others, or return it undone, being responsible for loss or damage, are not within the Truck Acts. (*Squire* v. *Midland Lace Co.*, 1905 2 K.B. 448.)

But as to whether they would be included as "outworkers," see par. (*c*) of this Part of this Schedule *infra*.

(2) The Workmen's Compensation Act, 1897, s. 7 (2) :—

"'*Workman' includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one* of service or apprenticeship *or otherwise*, and is expressed or implied, oral or in writing."

The following were within this definition :—

(*a*) Platers working in a squad in a ship-building yard, on a piece-work contract, and employing labourers under them, but required to work the full recognised hours and obey the foreman (*Macready* v. *Dunlop & Co.* 37 Sc. L.R. 779).

(*b*) A quay-labourer casually employed for a varying number of

S. 1 (2) hours at irregular intervals (*Small* v. *M'Cormick & Ewing*, 36 Sc. L.R. 700).

But not the following :—

(*a*) A foreman bricklayer who tendered to supply labour and tools (not materials) at a fixed price of 160*l.* for the job (*Simmons* v. *Faulds*, 17 T.L.R. 352).

(*b*) A man who did work in the labour yard of a charitable society in return for board and lodging (*Burns* v. *Manchester and Salford Wesleyan Mission*, 99 L.T. 579).

(3) The Workmen's Compensation Act, 1906, s. 13 :—

"'*Workman*' . . . *means any person who has entered into or works* under a contract of service or apprenticeship with an employer, *whether by way of manual labour, clerical work, or otherwise*, and whether the contract is expressed or implied, or is oral or in writing."

The following were held to be within this definition :—

(*a*) A labourer who had contracted to do whitewashing at piece-rates, finding his own materials out of money provided by the employer (*Bargewell* v. *Daniel*, 9 W.C.C. 142).

(*b*) A school teacher employed in any kind of school [see Part II (*d*) of this Schedule] or a nursery governess, but not a person who comes into a house at intervals to teach the piano (*Simmons* v. *The Heath Laundry Co.*, 3 B.W.C.C. 200).

(*c*) A letter-fixer who worked at piece-work for a number of employers, and was not obliged to accept any particular job (*Burnham & Co.* v. *Taylor*, 47 Sc. L.R. 643).

(*d*) A professional football player (*Walker* v. *Crystal Palace Football Club, Ltd.*, 1910, 1 K.B. 87).

(*e*) A roadman breaking stones for a contractor at piece-rates (*Boyd* v. *Doherty*, 46 Sc. L.R. 71).

(*f*) An unemployed workman working for the Central Unemployed Body for London (*Porton* v. *The Central Body*, 1909, 1 K.B. 173).

The distinction was most briefly summarised by Brett, L.J., in his evidence before the Select Committee on Employers' Liability (Vol. X., p. 123). "If you were to contract with a person that he and his servants should do all your work in the way you should direct his servants to do it, they are your servants ; that is only a different mode of paying them ; but if you contract that he and his servants should do the work in the way he thinks best, then he is a contractor." But one may add that in order to make *him*, as well as his servants, a servant within this Act, it would be necessary that he should be bound to take a personal part in the work, and obey the employer's orders.

"**Service or apprenticeship.**"—"An apprentice is a person who by contract is to be taught a trade." Per Grove, J., in *R.* v. *Laindon* (8 T.R. 379). The distinction between these contracts is not of much importance for the purposes of the Act.

Apprenticeship of pauper children by Boards of Guardians is regulated by 43 Eliz. c. 2, s. 3 ; 32 Geo. 3, c. 57 ; 42 Geo. 3, c. 46 ; 56 Geo. 3, c. 139 ; 14 & 15 Vict, c. 11 ; 39 & 40 Vict. c. 61, s. 33, and General Orders of July 24th, 1847 (articles 52–74) and February 15th, 1898.

Other contracts of apprenticeship are now free from formality, except that they must, if for more than one year, be in writing, and bear a 2*s.* 6*d.* stamp (Stamp Act, 1891, s. 25).

"**Written or oral.**"—The effect of these words is not to make an oral contract enforceable which is required by the Statute of Frauds to be in writing, *i.e.*, if it is apparent from its terms that it is not to be completed within a year from the making (*Banks* v. *Crossland*, L.R. 10, Q.B. 97). Part performance will not take such a contract out of the Statute (*Britain* v. *Rossiter*, 48, L.J.Q.B.362). S. 1 (2) —

It is very difficult to say what is the position under the Act of persons employed under contracts of service or apprenticeship which are (*a*) void, (*b*) unenforceable, (*c*) voidable by virtue of the common law or any statute. It is submitted that if the contract is void—*e.g.*, for illegal or immoral consideration, or as being in restraint of trade, or an agreement contravening the Truck Act, 1831, s. 1, the servant or apprentice is excluded from the benefits of this Schedule.

But if the contract is merely voidable at the option of one of the parties, or unenforceable by action, or if the document containing it is inadmissible in evidence because unstamped, it is submitted that the servant is included, though grave difficulties may arise when it is sought to enforce the contributions and other liabilities of the employer.

Written contracts of service require a *6d.* stamp, unless "for the hire of any labourer, artificer, manufacturer, or menial servant." (Stamp Act, 1891, Schedule 1.)

"**Implied.**"—*i.e.* from the fact of the work being done, but this alone is not enough (*Reeve* v. *Reeve*, 1 F. & F. 280). When a person does work on the order of another under such circumstances that it must be presumed that he looks to be paid as a matter of right by him, then a contract would be implied with that person ; see, however, *Taylor* v. *Laird* (25 L.J. Ex. 329). The difficulty most frequently occurs where the parties are relatives or friends ; see *e.g. Davies* v. *Davies*, 9 C. & P. 87, and cf. Part II. of this Schedule (*f*) and (*l*).

"**And whether paid by the employer or some other person.**"—From here to the end of the paragraph is new. It has never been held necessary that payment should come directly from the actual employer (see cases of sub-contractors above). Where workmen are lent or let on hire by their employer to another person, the wages may be paid by the latter, without affecting the position of the original employer, except as against strangers (*Reed* v. *Smith*, *Wilkinson & Co.* 3 B.W.C.C. 223) ; but see Third Schedule (6), and note on "without any money payment," *infra*.

"**Whether under one or more employers.**"—This appears to be a departure from the ordinary law, by which *exclusive* service was considered essential to the contract (*R.* v. *Goodbody*, 8 C. & P. 665 ; *Exp. Johnson*, 7 Dowl. 702 ; *Hardy* v. *Ryle*, 9 B & C. 603 ; but see *Burnham* v. *Taylor*, 47 Sc. L.R. 643). It of course covers the case of a man in regular employment who changes his employer or habitually works for several employers every week. But subject to the exceptions in Part II. (*h*) of this Schedule, *q.v.*, it includes casual labourers within the compulsory scheme. See Third Schedule (5).

"**Whether paid by time or by the piece . . . or otherwise.**"—*e.g.* by commission or fees or a share in the profits. See Part II. (*e*) *infra*, and notes, as to the position of agents. Where pay-

S. 1 (2) — ment is by a share in the profits it is necessary to distinguish a servant from a partner: see the Partnership Act, 1890, s. 2 (3) (*b*).

A servant does not become a partner by receiving a share of profits unless he has some right of control and liability for the losses (*Ross* v. *Parkyns*, L.R. 20 Eq. 331). Nor does a partner become a workman within the Workmen's Compensation Act, because he chooses to work in the mine belonging to the partnership at weekly wages paid out of the profits (*Ellis* v. *Joseph Ellis & Co.* 1905, 1 K.B. 324), although the part owner of a ship who is not a trading partner and is employed as master may be a workman (*Carswell* v. *Sharpe*, 47 Sc.L.R. 335).

"**Or . . . without any money payment.**"—This is of course not the same as "without any consideration," in which case there would be no enforceable contract unless under seal, but covers cases where services are rendered in consideration of, *e.g.*, board and lodging only. Waiters in many cases depend entirely upon "tips" for their remuneration, and even pay their employers for the privilege of waiting; but they are servants of the restaurant-proprietors, see *Laugher* v. *Painter*, (5 B. & C. 547); *Penn* v. *Spiers & Pond, Ltd.* (1908, 1 K.B. 766). For the position of employers in such cases under this Act, see the Third Schedule (3) and (7) *infra*.

(*b*) Employment under such a contract as aforesaid as master or a member of the crew of any ship registered in the United Kingdom or of any other British ship or vessel of which the owner, or, if there is more than one owner, the managing owner or manager, resides or has his principal place of business in the United Kingdom.

For special provisions relating to the Royal Navy, see s. 46, and to the Mercantile Marine s. 48.

"**Under such a contract.**"—As to the necessity for engagements of seamen to be in writing, see the Merchant Shipping Act, 1894, ss. 113–125, and as to sea-fishermen ss. 399–408. Apprenticeship to the sea-service is regulated by ss. 105–109, and to the sea-fishing service by ss. 392–398, of that Act.

"**Master.**"—Questions often arise as to whether the master of a ship is servant or partner; see *Carswell* v. *Sharpe* (47 Sc. L.R. 335), and as to the "thirds system" *Boon* v. *Quance* (1 B.W.C.C. 166) *Jones* v. "*Alice and Eliza*" (*ib.* 495), and *Jamieson* v. *Clark* (46 Sc. L.R. 73).

"**Any ship registered in the United Kingdom.**"—*i.e.*, under the Merchant Ship Acts, 1894, Part I., and 1906, ss. 50–52, this seems to include a vessel so registered, although not entitled to be, because owned by a foreign subject (*R.* v. *Björnsen*, 34 L.J.M.C. 180).

"**Or of any other British ship or vessel.**"—See s. 1 o. the Act of 1894. Apparently a ship is a British ship provided she is owned wholly by British subjects (substantially defined as above),[1] or by a body corporate [the members of which may all be aliens (*R.* v. *Arnaud*, 16 L.J.Q.B. 50)] established in and under the laws of some part of the British Dominions.

S. 1 (2) —

This includes vessels registered as British ships at any port of registry established in the British Dominions or a foreign port under ss. 4 and 88–90 of the Act of 1894 ; also British-owned ships registered in and under the flag of a foreign country (*Chartered Bank of India* v. *Netherlands &c. Co.*, 10 Q.B.D. 534), and the following unregistered vessels :—

(1) A vessel of the Royal Navy [but see Part II. (*a*) of this Schedule].

(2) Any other ship belonging to H.M. Government and not registered, under s. 80 of the Act of 1906.

(3) Small coasting and fishing vessels exempt from registry under s. 3 of the Act of 1894.

(4) Probably (*a*) an unregistered ship which ought to have been registered [see ss. 2 (2), 72, 266 of the Act of 1894].

(*b*) A ship built within the King's Dominions for a foreign purchaser but undelivered (see *Union Bank of London* v. *Lenanton*, 3 C.P.D. 243).

(*c*) A British-owned ship between the time of her launch and her registry (see Merchant Shipping Acts, 1898, s. 1, and 1906, s. 70.

"**Managing owner or manager.**"—See s. 59 of the Act of 1894 where, however, the terms are not defined ; for descriptions of the position and authority of such persons see *Frazer* v. *Cuthbertson* (6 Q.B.D. 93), *The Huntsman* (1894), P. 214 ; presumably the fact of registration under that section would be at least *primâ facie* evidence as to the identity of these persons. In the Workmen's Compensation Act, 1906, s. 13, "'Manager' in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner."

"**Resides.**"—For the purposes of the Old Age Pensions Act, 1908, residence has been defined (by Regulation 29) as "actual presence in the United Kingdom uninterrupted otherwise than by temporary absences," but under the Parliamentary Registration Acts and under the Income Tax Acts it has been held to mean no more than the possession of a place of abode, with occasional bodily presence, and an intention to return : probably for the present purpose the latter interpretation would be more appropriate.

"**Has his principal place of business.**"—See the Act of 1894, s. 1 (*d*), the Companies Act, 1908, s. 62, and O. 48*a*, r. 3 of the Rules of the Supreme Court. Where there is more than one place of business the principal place is probably that from which the work carried on at the other places is controlled.

Foreign ships are not included, although by reason of the residence or place of business of the responsible manager being in the United Kingdom he might be made amenable to the process of our law.

(*c*) Employment as an outworker (that is to say, a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials for the purposes of the trade or business of the last-mentioned person), unless excluded by a special order made by

S. 1 (2) the Insurance Commissioners, and any such order may exclude outworkers engaged in work of any class, or outworkers of any class or description specified in the order, or may defer the commencement of this Act as respects all outworkers, and the person who gave out the articles or materials shall, in relation to the person to whom he gave them out, be deemed to be the employer.

"**Employment.**"—For some reason which is not apparent this is the only paragraph in which the employment is not in terms confined to the United Kingdom. The practical effect is likely to be slight, but it would strictly bring within the Act a British subject who sends work to be done in a foreign country. Employment as an outworker is not under a contract of service.

"**That is to say . . . the last-mentioned person.**"—This is the definition in s. 13 of the Workmen's Compensation Act, 1906, slightly modified.

"**A person . . . on other premises.**"—This appears to include the case of a firm (or even a limited company) who may take in work from another firm or company to be done on the premises of the former. The word "employment," however, probably carries with it the implication that the person to whom the articles are given must himself at least take part in the work which is to be done upon them.

"**For the purposes of the trade or business.**"—See note to Part II. (*h*) *infra*.

"**Unless excluded.**"—See also Part II. (*j*) *infra*.

"**Special order.**"—See s. 114, the Ninth Schedule, and Appendix I. 14 (iv).

"**The commencement.**"—See s. 116 *infra*.

"**The person who gave.**"—By himself or his agent; where the articles are actually given out by (*e.g.*) a foreman, the foreman's employer will also be the employer of the outworker.

"**In relation to the person to whom he gave them.**"—But not to other persons to whom the first-mentioned person may in turn give them (see *Squire* v. *Midland Lace Co.*, 1905, 2 K.B. 448). Each such person will in his turn be the employer of the next.

For provisions with regard to payment of contributions see the Third Schedule (10) under s. 4 (2) *infra*.

(*d*) Employment in the United Kingdom in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract of bailment (or in Scotland any contract of letting to hire) in consideration of the payment of a fixed sum or a share in the earnings or otherwise, in which case the owner shall for the purposes of Part I. of this Act be deemed to be the employer.

This paragraph prevents the application of the recent decision of the House of Lords (*Smith* v. *General Motor Cab Co.*, 27 T.L.R. 370),

which excluded a taxi-cab driver from the Workmen's Compensation Act. S. 1 (2)

In cases of bailment the "employee" receives no wages or remuneration from the "employer"; for the questions arising from this with regard to contributions see notes to s. 4 (2), and the Third Schedule (3) and (4).

Part II.

Exceptions.

(*a*) Employment in the naval or military service of the Crown, including service in Officers Training Corps, except as otherwise provided in Part I. of this Act.

"**Officers Training Corps.**"—See the Territorial and Reserve Forces Act, 1907, Part II.

"**Otherwise provided.**"—See s. 46 *infra*.

(*b*) Employment under the Crown or any local or other public authority where the Insurance Commissioners certify that the terms of the employment are such as to secure provision in respect of sickness and disablement on the whole not less favourable than the corresponding benefits conferred by Part I of this Act.

"**Under the Crown.**"—See s. 53 *infra*.

"**Where the Insurance Commissioners certify.**"—It is open to question whether such a certificate is subject to appeal under s. 66 (1) (i) *infra*, but probably it is not within that provision.

"**Sickness and disablement.**"—Although they secure none of the other benefits (medical, sanatorium, maternity, etc.) mentioned in s. 8 (1) *infra*.

(*c*) Employment as a clerk or other salaried official in the service of a railway or other statutory company, or of a joint committee of two or more such companies, where the Insurance Commissioners certify that the terms of employment, including his rights in such superannuation fund as is hereinafter mentioned, are such as to secure provision in respect of sickness and disablement, on the whole, not less favourable than the corresponding benefits conferred by Part I of this Act, and the person so employed is entitled to rights in a superannuation fund established by Act of Parliament for the benefit of persons in such employment, or in Ireland is entitled to rights in any such superannuation

S. 1 (2) fund or in any railway superannuation fund which may be approved by the Insurance Commissioners.

See notes to (*b*) *supra*.

"**Salaried official.**"—As opposed to a person remunerated by wages; *cf.* the Bankruptcy Act, 1883, s. 53 (7) and cases decided thereon, *e.g. Exp. Brindle* (56 L. T. 398).

"**Statutory company.**"—Not a company registered under the Companies Act, 1908, but a company incorporated by a special Act, to which as a rule the Companies Clauses Act, 1845, the Railway Clauses Act, 1845, or a similar statute applies.

"**Superannuation fund.**"—See *Hobson v. Hull*, 4 E. & B. 926. "Superannuation Allowance," in the Superannuation Acts, 1854 to 1892, includes "any pension or superannuation, or other retiring allowance."

(*d*) Employment as a teacher to whom the Elementary School Teachers Superannuation Act, 1898, or a scheme under section fourteen of the Education (Scotland) Act, 1908, or the National School Teachers (Ireland) Act, 1879, applies, or in the event of any similar enactment being hereafter passed as respects teachers or any class of teachers (other than teachers in public elementary schools), as a teacher to whom such enactment applies.

See notes to (*b*) *supra*.

"**The Elementary School Teachers Superannuation Act.**"—Applies only to certificated teachers employed in some capacity in or connected with a public elementary school, not being an evening school, or a certified reformatory or industrial school, up to the age of sixty-five. See s. 52 *infra*.

"**The National School Teachers (Ireland) Act, 1879.**"—Applies only to "classed teachers."

(*e*) Employment as an agent paid by commission or fees or a share in the profits, or partly in one and partly in another such ways, where the person so employed is mainly dependent for his livelihood on his earnings from some other occupation, or where he is ordinarily employed as such agent by more than one employer, and his employment under no one of such employers is that on which he is mainly dependent for his livelihood.

It is apparently contemplated that but for this exception agents would be servants within Part I. (*a*), but it is submitted that even if they are employed by one employer only this is not necessarily so. It has been held that an agent is not a "clerk or servant" under ss. 67 and 68 of the Larceny Act, 1861. The distinction is thus stated in *R.* v. *Walker*, 27 L.J.M.C. 207. "A principal has the right to direct what the agent has to do; a master has not only that right, but also

the right to say how it is to be done (by a servant)" per Bramwell B.; and in *R.* v. *Bowers*, 1 C.C.R. 41, "a person who is employed to get orders and receive money, but who is at liberty to get those orders and receive that money where and when he thinks proper, is not a clerk or servant within the meaning of the statute . . . the prisoner was at liberty to dispose of his time in the way he thought best, and to get or abstain from getting orders on any particular day as he might choose; and this state of things is inconsistent with the relation of master and servant." This would seem to exclude a large proportion, *e.g.*, of insurance agents. S. 1 (2) —

"**Paid by commission . . . such wages.**"—This does not include payment partly by salary and partly in one of the ways here mentioned.

"**Mainly dependent.**"—See note to s. 1 (3) (*a*) *infra*.

"**Under no one of such employers.**"—He is apparently within the exception if his employment under all such employers together is his main source of livelihood, provided he does not depend mainly upon any one.

(*f*) Employment in respect of which no wages or other money payment is made where the employer is the occupier of an agricultural holding and the employed person is employed thereon, or where the person employed is the child of, or is maintained by, the employer.

"**Or where the person employed.**"—This is of general application and not confined to the case of an agricultural holding.

(*g*) Employment otherwise than by way of manual labour and at a rate of remuneration exceeding in value one hundred and sixty pounds a year, or in cases where such employment involves part-time service only, at a rate of remuneration which, in the opinion of the Insurance Commissioners, is equivalent to a rate of remuneration exceeding one hundred and sixty pounds a year for whole-time service.

"**Otherwise than by way of manual labour.**"—Cf. the Employers and Workmen Act, 1875, s. 10 under Part I. (*a*) *supra*, in regard to which it has been decided that omnibus-conductors, tram-drivers, goods-guards, grocer's assistants, and hairdressers are not engaged in manual labour (though a motor-omnibus driver is), but partly on the ground that the occupations must be *ejusdem generis* with those specifically enumerated in that section. In any case these decisions are not likely to be very helpful in this case, as such persons do not usually earn more than £160 a year.

See also per A. L. Smith, J., in *Cook* v. *North Metropolitan Tramways Co.*, 18 Q.B.D. at p. 684: "Telegraph clerks and all persons engaged in writing perform manual work, but not manual labour."

A foreman was held not to be a person "ordinarily engaged in manual labour," notwithstanding that at the time of the accident he

S. 1 (2) was actually engaged in moving planks (*Osborne v. Jackson*, 11 Q.B.D. 619).

Cf. the Workmen's Compensation Act, 1906, s. 13. "Workman does not include any person employed otherwise than by way of manual labour whose remuneration exceeds £250 a year."

The following have been held not to be "workmen" under the Acts of 1897 and 1906, in spite of the wide definitions in those Acts [see notes to Part I. (a) *supra*] apparently on the ground that they were not engaged in manual labour:

(*a*) A poor-law doctor in Ireland (*Murphy v. Enniscorthy Board of Guardians*, 2 B.W.C.C. 291).

(*b*) A lecturer employed to explain the merits of an airship at an exhibition (*Wailes v. Franco-British Exhibition Co.*, 25 T.L.R. 441).

(*c*) A certificated colliery manager (*Simpson v. Ebbw Vale Co. Ltd.*, 1905, 1 K.B. 453).

(*d*) A chemist with University degrees working in the laboratory of a chemical factory, but mainly in the actual works, doing much manual work (*Bagnall v. Lewinstein, Ltd.*, 1907, 1 K.B. 531; but dis. Farwell, L.J., and quære).

"**Rate of remuneration**."—This includes all rewards for service, whether in cash or kind; it does not of course include private income or earnings from any source other than the employment in question.

See *Shailes v. Blue Anchor Line, Ltd.* (1911, 1 K.B. 300), where the remuneration of a ship's purser was held to include salary, share money, commission, value of board and lodging, bonus on completion of each voyage without complaint, and profit on retailing whisky to passengers.

See also notes to the Second Schedule under s. 4 (1) *infra*.

"**Exceeding £160 a year**."—Cf. s. 1 (5) *infra*. Since there is no provision for taking an average of several years (as there is under the Income Tax Acts), this must mean that the exception is to apply as soon as the rate exceeds £160 a year, but only so long as it continues to exceed that figure.

"**In the opinion of the Insurance Commissioners**."—See note to (*b*) *supra*.

(*h*) Employment of a casual nature otherwise than for the purposes of the employer's trade or business, and otherwise than for the purposes of any game or recreation where the persons employed are engaged or paid through a club, and in such case the club shall be deemed to be the employer.

"**Employment . . . business**."—This is taken verbatim from the Workmen's Compensation Act, 1906, s. 13.

"**Casual**."—Means "arising from chance, irregular" (*Johnson's Dictionary*); it does not include employment which, though not continuous, is regular, and depends upon a single contract, *e.g.*, a contract with a jobbing gardener or washerwoman to come and work at a private house once a week (*Dewhurst v. Mather*, 1906, 2 K.B. 754). Such a person is not within this exception; as to who is to be treated as the employer, see Third Schedule (5).

A man who occasionally cleans windows at a house, but at irregular intervals, and on a separate hiring each time, is "casual" (*Hill* v. *Begg*, 1908, 2 K.B. 802), even if he cleans them when he likes, about once a month, without asking leave (*Rennie* v. *Reid*, 45 Sc. L.R. 814). For the purposes of this Act a man may be employed regularly on some days in the week, and casually on others, but must be paid for if not by a casual, then by his regular, employer. S. 1 (2)

"**The employer's trade or business.**"—Not the workman's; "business" has been defined as anything which occupies the time and attention and labour of a man for the purpose of profit (per Jessel, M.R., *Smith* v. *Anderson*, 15 Ch. D. 258), but it need not occupy the personal attention of the proprietor. The element of profit is probably necessary; this excludes the casual employees of charitable societies, unless the funds of the society are raised, wholly or in part, by the proceeds of the employment (see, however, s. 51 *infra*). Repairing the roof of a shop where the assistants live in the upper floors is for the purposes of the shopkeeper's trade (*Johnson* v. *Monasterevan Store Co.*, 1900, Ir.L.R. 105).

Decisions under the Income Tax Acts, Schedule B ("trade, manufacture, adventure, or concern"), may be helpful on this point.

Letting out merchant vessels to freight is a trade (*A.-G.* v. *Borrodaile*, 1 Price 148).

A municipality carries on a trade in supplying gas or electricity to residents, but not in lighting the streets (*Dillon* v. *Haverfordwest*, 60 L.J.Q.B. 477).

A burial board and a cemetery company carry on a trade, whatever the destination of the profits (*Paddington Burial Board* v. *Inland Revenue*, 13 Q.B.D. 9).

The purchase, sale, and development of land is a trade (*Inland Revenue* v. *Cardonald Co.*, 44 Sc.L.R. 66).

Colportage is not a trade (*Religious Tract Society* v. *Forbes*, 33 Sc.L.R. 289).

"**Game.**"—Probably includes only "lawful games."

"**Engaged or paid through a club.**"—Apparently this includes only cases where the employee, though engaged and paid for each game by the player, either obtains some licence or permission from some official of the club, or actually receives his money from him.

"**Club.**"—For the purposes of the Licensing Acts it has been held that clubs exclusively owned by and composed of members are exempt from the necessity of having a licence; proprietary and company clubs (unless shareholders and members are entirely the same persons) being excluded (*National Sporting Club* v. *Cope*, 82 L.T. 352). Perhaps a wider interpretation would be given here, but in any case a place to which strangers are admitted on payment by themselves (not as the guests of members) can hardly be a club.

(*i*) Employment of any class which may be specified in a special order as being of such a nature that it is ordinarily adopted as subsidiary employment only and not as the principal means of livelihood.

"**Special order.**"—See s. 113, the Ninth Schedule, and Appendix I 14 (vi).

S. 1 (2) "**Principal means of livelihood.**"—See note to s. 2 (1) (*b*) *infra*.

(*j*) Employment as an outworker where the person so employed is the wife of an insured person and is not wholly or mainly dependent for her livelihood on her earnings in such employment.

"**Outworker.**"—See Part I (*c*) *supra*.

"**Mainly dependent.**"—See s. 1 (3) (*a*) and s. 2 (1) (*b*) *infra*, and especially *Williams* v. *Owen Coal Co.*, Ltd. (1907, 2 K.B. 422).

(*k*) Employment as a member of the crew of a fishing vessel where the members of such crew are remunerated by shares in the profits or the gross earnings of the working of such vessel in accordance with any custom or practice prevailing at any port if a special order is made for the purpose by the Insurance Commissioners, and the particular custom or practice prevailing at the port is one to which the order applies.

"**Crew of a fishing vessel.**"—For general provisions regulating the sea fishing service see the Merchant Shipping Act, 1894, Part IV. See also notes to Part I (*h*) of this Schedule *supra*.

"**Shares in the profits.**"—See note to Part I (*a*), "whether paid by time, or by the piece, or otherwise" *supra*.

"**Custom or practice.**"—See note to s. 47 (1) *infra*.

"**Special order.**"—See s. 113, the Ninth Schedule, and Appendix I 14 (*v*).

(*l*) Employment in the service of the husband or wife of the employed person.

Provided that the Insurance Commissioners hereinafter constituted may, with the approval of the Treasury, by a special order made in manner hereinafter provided, provide for including amongst the persons employed within the meaning of this Part of this Act any persons engaged in any of the excepted employments specified in Part II of the said schedule either unconditionally or subject to such conditions as may be specified in the order.

"**Special order.**"—See s. 113, the Ninth Schedule, and Appendix I 14 (*a*).

(3) The persons not employed within the meaning of this Part of this Act who are entitled to be insured persons include all persons who either— S. 1 (3)

(*a*) are engaged in some regular occupation and are wholly or mainly dependent for their livelihood on the earnings derived by them from that occupation ; or

"**Regular occupation.**"—*i.e.*, regular as opposed to temporary or intermittent (*R.* v. *Oldham*, L.R. 4 Q.B. 290). In the Bills of Sale Acts, where the grantor must state his occupation in the document, it has been defined as "the trade or calling by which he ordinarily seeks to get his livelihood."

It is presumed that a person who regularly follows more than one occupation would be included.

"**Wholly or mainly dependent for their livelihood.**" This probably means "deriving the greater part of their actual income"; see notes on s. 2 (1) (*b*) *infra*. It may, however, mean "who but for such earnings would be unable to obtain the necessaries of life," *i.e.*, excluding cases where the "unearned income," though only a small part of the actual income, is yet sufficient to keep body and soul together.

(*b*) have been insured persons for a period of five years or upwards ;

i.e., as "employed" or "voluntary" contributors. Note that no particular number of contributions need have been paid ; a member of an approved society does not lose his membership or cease to be an "insured person" because, owing to arrears [s. 10 (1)] he is suspended from benefit. See the definitions in s. 79 as to the conditions on which unemployment ceases to be temporary, and the effect of suspension on membership.

and the persons possessing such qualifications who become or continue to be insured persons are in this Act referred to as voluntary contributors :

"**Voluntary contributors.**"—See s. 5 *infra*.

Provided always that no person whose total income from all sources exceeds one hundred and sixty pounds a year shall be entitled to be a voluntary contributor unless he has been insured under this Part of this Act for a period of five years or upwards.

"**From all sources.**"—Not, however, including his wife's income.

S. 1 (3) "**Exceeds £160 a year.**"—Cf. the First Schedule, Part II (g) under subs. (2), *supra*.

"**Period.**"—This must be continuous, although the payment of contributions need not be. If the income (or, for an employed person, the remuneration) at any time during the four years rises above £160, that will break the period, so that if it again falls below that level the period will begin afresh. A person in such a position who was a member of an approved society would be in arrear (s. 10) for the intervening period, unless he made arrangements with the society to continue to pay contributions apart from this Act.

(4) Except as hereinafter provided nothing in this section shall require or authorise a person of the age of sixty five or upwards not previously insured under this Part of this Act to become so insured.

"**Except as hereinafter provided.**"—See s. 40 *infra*, which, however, does not make such a person strictly "insured" within the meaning of this section.

Exemptions. 2.—(1) Where any person employed within the meaning of this Part of this Act proves that he is either—

(*a*) in receipt of any pension or income of the annual value of twenty-six pounds or upwards not dependent upon his personal exertions; or

(*b*) ordinarily and mainly dependent for his livelihood upon some other person,

"**Dependent.**"—Cf. cases on the word "dependants" in the Workmen's Compensation Acts, 1897, Sch. I. (1), and 1906, s. 13: the test is whether the employed person derives the funds actually expended upon his maintenance from another; "the necessaries of life having regard to the class and position of life of the applicant," and "the standard of living in the neighbourhood" are immaterial (*Main Colliery Co. v. Davies*, 1900, A.C. 358; *French v. Underwood*, 19 T.L.R. 416). There is a legal presumption of the dependency of a wife upon her husband, which may, however, be rebutted (*Williams v. Ocean Coal Co. Ltd.*, 1907, 2 K.B. 422). The same no doubt would also apply to the dependency of children under sixteen upon their father or widowed mother.

he shall be entitled to a certificate exempting him

from the liability to become or to continue to be insured under this Part of this Act. S. 2 (1)

"**Certificate exempting him.**"—For other cases of exemption depending upon certificate, see the First Schedule, Part II (*b*), (*c*), (*g*), under s. 1 (2) *supra*, and ss. 51 and 81 (3) *infra*.

"**Continue to be.**"—There is no provision as to the funds standing to the credit of any person who, having been a contributor, ceases under this provision to be one; apparently they are forfeited to his approved society, or to the Post Office Fund if he is a deposit contributor.

This is only for the benefit of the "person employed" himself: it does not enable the employer to secure exemption from the liability to contribute [see s. 4 (4) (*b*)] in respect of such a person.

(2) All claims for exemption shall be made to, and certificates of exemption granted by, the Insurance Commissioners in the prescribed manner and subject to the prescribed conditions, and may be so made and granted before, as well as after, the commencement of this Act: Provided that the regulations of the Insurance Commissioners may provide for claims under this section being made to and certificates granted by approved societies and Insurance Committees hereinafter constituted.

"**Prescribed.**"—*i.e.*, by the Commissioners themselves (see s. 65). This is the meaning of this word wherever it occurs.

"**Insurance Committees.**"—See s. 59.

Contributions.

3. Except as otherwise provided by this Act, the funds for providing the benefits conferred by this Part of this Act and defraying the expenses of the administration of those benefits shall be derived as to seven-ninths (or, in the case of women, three-fourths) thereof from contributions made by or in respect of the contributors by themselves or their

Contributions by insured persons, employers, and the Treasury.

S. 3 employers, and as to the remaining two-ninths (or, in the case of women, one quarter) thereof from moneys provided by Parliament.

"**Otherwise provided.**"—See ss. 4 (1) and 45. There are also certain cases in which benefits provided *aliunde* are taken as paid by an approved society and the Parliamentary contribution is increased accordingly. See ss. 46, 47, 48.

"**Benefits.**"—See ss. 8–13, *rates*; this includes the additional benefits mentioned in s. 8 (1) (*f*).

"**Administration.**"—See ss. 14–18; the expenses here referred to are those which will be "properly incurred" [s. 54 (1)] by approved societies (see ss. 23–29) and Insurance Committees (see ss. 42 and 59) in connection with administration. There is no statutory limit upon their amount, but the actuarial estimate is *vijzd* per member per week, and the Insurance Commissioners may by regulation limit it [ss. 35 (2), 42 (*c*), 61]. The expenses of the Insurance Commissioners [s. 57], audit and valuation (ss. 35, 36), are to be paid by the Treasury in addition to the contributions here mentioned.

"**Contributions.**"—See s. 4. The Parliamentary contribution is in the case both of men and women equivalent to a contribution of 2*d* per week, but is paid (with interest) when the benefits are claimed, instead of every week, except in the cases mentioned in the proviso to s. 4 (1) and in s. 49 (2).

Rates and rules for contributions by employed contributors and their employers.

4.—(1) The contributions payable in respect of employed contributors shall be at the rate specified in Part I of the Second Schedule to this Act (hereinafter referred to as the employed rate), and shall comprise contributions by the contributors and contributions by their employers at the rates specified in that Part of that schedule, and shall be payable at weekly or other prescribed intervals: Provided that in the case of an employed contributor of the age of twenty-one or upwards whose remuneration does not include the provision of board and lodging by the employer and the rate of whose remuneration does not exceed two shillings a working day, such part of the contributions payable in respect of him as is specified in the said schedule shall be paid out of moneys provided by Parliament.

"**Employed Contributors.**"—See s. 1 (2) and notes. S. 4 (1)

"**Their employers.**"—See notes to "contract of service" under s. 1 (2).

It is to be noticed that this Act contains no provision similar to the definition of "employer" in the Workmen's Compensation Act, s. 13. "'Employer' includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person."

As to the question of who is in law the employer in such a case see *Rourke* v. *White Moss Colliery Co., Ltd.*, 2 C.P.D. 205, *Jones* v. *Scullard* (1898), 2 Q.B. 565, *Perkins* v. *Steel*, 23 T.L.R. 433.

The Commissioners have power to impose upon the person having the general control and management of employed persons the liability for their contributions in the first instance, enabling him to deduct such contributions from payments made to the sub-contractor who is their immediate employer [the Third Schedule (6) *infra*. Cf. s. 4 of the Workmen's Compensation Act, 1906].

"**Intervals.**"—See Appendix I. 5 (4).

"**Such part of the contributions.**"—Though paid by Parliament those moneys are still part of the contributions, that is of the seven-ninths mentioned in s. 3, and not a part of the Parliamentary two-ninths.

SECOND SCHEDULE.

Rates of Contribution under Part I of this Act relating to Health Insurance.

Part I.

Employed Rate.

In the case of men		7*d.* a week.
,, ,, women		6*d.* ,,

Contributions by Employers and Employed Contributors.

To be paid by the employer		3*d.* a week.
,, ,, contributor	Men,	4*d.* ,,
	Women,	3*d.* ,,

In the case of employed contributors of either sex of the age of 21 or upwards whose remuneration does not include the provision of board and lodging by their employer, and the rate of whose remuneration does not exceed 2*s.* 6*d.* a working day, the following shall be the rates of contribution :—

S. 4 (1). Where the rate of remuneration does not exceed 1*s.* 6*d.* a working day—

		A week
To be paid by the employer	For men,	6*d.*
	" women,	4*d.*
" out of moneys provided by Parliament		1*d.*

Where the rate of remuneration exceeds 1*s.* 6*d.* but does not exceed 2*s.* a working day—

		A week
To be paid by the employer	For men,	9*d.*
	" women,	4*d.*
" " contributor		1*d.*
" out of moneys provided by Parliament		1*d.*

Where the rate of remuneration exceeds 2*s.* but does not exceed 2*s.* 6*d.* a working day—

To be paid by the employer	For men,	4*d.*
	" women,	3*d.*
" " contributor		3*d.*

"**Of the age of 21.**"—See the definition of "age" in s. 79 *infra*.

"**Where the rate of remuneration does not exceed 1*s.* 6*d.* a working day.**"—Difficulties may arise in making these calculations where remuneration is based on periods of more than a day and parts of a day are worked. Is the average to be taken? and if so is part of a day to be reckoned as a whole day, half day, or in exact proportion to the hours worked? *e.g.*, a labourer earns 14*s.* a week and has a half day on Saturday and no Sunday work; if the half day is to be reckoned as a whole he earns 2*s.* 4*d.* a day, if as a half he earns 2*s.* 6½*d.* More complicated cases could easily be imagined. The courts will not as a rule notice fractions of a day (*Clayton's case* 5 Rep. 1 *b*). Still greater difficulties arise where the remuneration is not based on time at all, and especially where as in the case of out workers the employer has no knowledge of or control over the time worked; see, however, the Third Schedule (10) *infra*. This is clearly one of the points to be decided by the Commissioners under s. 66 (1). Also in cases where part of the remuneration is not in cash (as far as allowed by the Truck Acts), *e.g.*, although cases where board and lodging is provided are exempt from this provision, when one or the other is provided alone this is part of the remuneration, and the value of it must be added to the cash wages. Again, where a bonus or additional payment is given at certain seasons of the year, as in the case of agricultural labourers, the remuneration being otherwise below the limit, such allowances must clearly be taken into account in finding the rate of remuneration. [See hereon note to the First Schedule, Part II (*g*), under s. 1 (2) *supra*. See also Cd. 2376 of 1905, "Earnings of Agricultural Labourers."] Where there are such allowances it is also very difficult to say whether the value of them is

to be averaged over any and if so what period, or reckoned only in the week in which they occur. S. 4 (1)

"**Working day.**"—It is submitted that a working day is any day upon which the employed person in fact works for payment.

Section 96 (1) which refers to a "working day of at least four hours" clearly recognises that Saturday morning may be a "working day." This seems to point to the conclusion that any day on which any work is done is to be reckoned as a complete working day.

For Part II of this Schedule see s. 81 (10) *infra*.

(2) The employer shall, in the first instance, pay both the contributions payable by himself (in this Act referred to as the employer's contributions), and also on behalf of the employed contributor the contributions payable by such contributor, and shall be entitled to recover from the contributor by deduction from his wages or otherwise the amount of the contributions so paid by him on behalf of the contributor, in accordance with the rules set out in the Third Schedule to this Act.

"**The employer shall.**"—As to the consequences of his failing to comply with this direction, upon himself and the contributor, see ss. 69 (2), 70, 110. He may arrange with the Board of Trade for a Labour Exchange to undertake the duty [s. 99 (1) *infra*].

"**Or otherwise.**"—The generality of these words is considerably limited by the Third Schedule. See pars. (3), (4) and (7) thereof.

THIRD SCHEDULE.

Rules as to Payment and Recovery of Contributions paid by Employers on behalf of Employed Contributors under Part I of this Act relating to Health Insurance.

(1) A weekly contribution shall be payable for each calendar week during the whole or any part of which an employed contributor has been employed by an employer: Provided that, where one weekly contribution has been paid in respect of an employed contributor in any such week, no further contribution shall be payable in respect of him in the same week, and that, where no remuneration has been received and no services rendered by an employed contributor during any such week, or where no services have been rendered by an employed contributor during any such

S. 4 (2) week and the employed contributor has been in receipt of sickness or disablement benefit during the whole or any part of that week, the employer shall not be liable to pay any contribution either on his own behalf or on behalf of the contributor in respect of that week.

"**For each calendar week.**"—See (1) *infra*; not necessarily in that week, see "weekly or other prescribed intervals," in s. 4 (1) *infra*.

"**In the same week.**"—See (3) *infra*.

"**Remuneration.**"—See notes to the First Schedule, Part II (g) and the Second Schedule, Part I *infra*.

"**In receipt of sickness or disablement benefit.**"—Cf. s. 10 (4) (a) *infra*; but note that in the cases there mentioned where the contributor, though ill, is deprived of benefit by some provision of the Act, contributions will still be payable if remuneration is paid, *i.e.*, if the service is not terminated by the illness [see notes to s. 47 (1) *infra*] except in the case mentioned in s. 47 (4) (c).

(2) The employer shall, except as hereinafter provided, be entitled to recover from the employed contributor the amount of any contributions paid by him on behalf of the employed contributor.

(3) Except where the employed contributor does not receive any wages or other pecuniary remuneration from the employer, the amounts so recoverable shall, notwithstanding the provisions of any Act or any contract to the contrary, be recoverable by means of deductions from the wages or other remuneration, and not otherwise; but no such deductions may be made from any wages or remuneration other than such as are paid in respect of the period or part of the period in respect of which the contribution is payable, or in excess of the sum which represents the amount of the contributions for the period (if such period is longer than a week) in respect of which the wages or other remuneration are paid.

"**Wages or other pecuniary remuneration.**"—This is for all practical purposes the same as "wages or other money payments" in (7) *infra*. Note, however, that (7) refers to cases where no such payments are received from the employer or any other person. Where payment is received from any other person but not from the employer, the latter may recover the contribution paid by him on behalf of the contributor by any of the means mentioned in the next paragraph.

"**Notwithstanding the provisions.**"—There are no provisions of any Act at present in force which forbid such a deduction. See s. 24 of the Truck Act of 1831.

"**And not otherwise.**"—The effect of this, with the following sentence, is that if by oversight, or for any other reason, the deduction is not made at the time when any particular wages are paid, it can never be made, nor can the sum be recovered by any process.

(4) Where a contribution paid by the employer on behalf of an employed contributor is recoverable from the contributor but is not recoverable by means of deductions as aforesaid, it shall (without prejudice to any other means of recovery) be recoverable summarily as a civil debt, but no such contribution shall be recoverable unless proceedings for the purpose are instituted within three months from the date when the contribution was payable.

The only case to which this paragraph applies is that in which a money payment is received from some person other than the employer; see (7) *infra*, and notes to the First Schedule, Part I (*a*), and to s. 4 (2), *supra*. A particular case to which such a provision may be intended to apply is that of bailment mentioned in the First Schedule, Part I (*d*) *supra*.

"**Recoverable summarily as a civil debt.**"—See Summary Jurisdiction Act, 1879, ss. 6, 35.

"**Instituted.**"—Summary proceedings are instituted when a complaint is made before justices (Summary Jurisdiction Act, 1848, s. 1); it need not be in writing (s. 8). *Beardsley* v. *Giddings*, 1904, 1 K.B. 847.

"**Three months.**"—Calendar months.

"**Payable,**"—*i.e.*, by the employer or person under whom the contributor is working (6). This limitation applies to proceedings other than summary proceedings, *e.g.*, a county-court action, which is "instituted" by plaint.

(5) Where the contributor is employed by more than one employer in any calendar week, the first person employing him in that week or such other employer or employers as may be prescribed shall be deemed to be the employer for the purposes of the provisions of Part I. of this Act relating to the payment of contributions and of this Schedule.

"**More than one employer.**"—See First Schedule, Part I (*a*), and Part II (*e*), (*h*) under s. 1 (2) *supra* and notes.

"**Calendar week.**"—See (11) *infra*.

"**The first person employing.**"—The effect of this (subject to any regulations the Insurance Commissioners may make) is that in the case of a man (*a*) in regular employment who goes from one employer to another during the week, the first employer (even if he goes on Monday) must pay the whole contribution payable in respect of him for the week and deduct the whole of

S. 4 (2) the man's contribution from such wages as are then due; and (*b*) casually employed in a trade or business, the employer who engages him on Monday must pay the whole contribution (deducting from the day's wages the man's contribution), and any employer who engages him on any later day must ascertain if he has been previously employed during the week, and if not must pay and deduct in the same way.

The contributions of a man employed by only one employer during only part of a calendar week must be paid as for a whole week.

See Appendix I. 5 (*d*).

(*6*) Regulations of the Insurance Commissioners may provide that in any cases or any classes of cases where employed contributors work under the general control and management of some person other than their immediate employer, such as the owner, agent, or manager of a mine or quarry, or the occupier of a factory or workshop, such person shall, for the purposes of the provisions of Part I of this Act relating to the payment of contributions and of this Schedule, be treated as the employer, and may provide for allowing him to deduct the amount of any contributions (other than employer's contributions) which he may become liable to pay from any sums payable by him to the immediate employer, and for enabling the immediate employer to recover from the employed contributors the like sums and in the like manner as if he were liable to pay the contributions.

See notes to the First Schedule, Part I, under s. 1 (2) and s. 4 (1) and (2) *supra*, and Appendix I. 5 (*e*).

This covers the cases of men "lent or let on hire," and of men working under sub-contractors.

(7) Where the contributor is not paid wages or other money payments by his employer or any other person, the employer shall be liable to pay the contributions payable both by himself and the contributor, and shall not be entitled to recover any part thereof from the contributor.

"**Or other money payments,**" *i.e.*, payments *ejusdem generis* with wages, payments in respect of his employment.

"**Any other person.**" This includes certainly any agent of the employer, and any person to whom the servant may be lent or let on hire; it also covers such cases as that of bailment where the remuneration is obtained by fares [the First Schedule, Part I. (*d*)]; of waiters at a restaurant who earn their whole remuneration by tips [*ib.* (*a*)]; and persons casually employed at a club [*ib.* (*h*, *j*)]. The employer can thus recover contributions otherwise than by deduction in these cases.

(8) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages of or otherwise to recover from the contributor the employer's contribution.

This will not, of course, prevent an employer, if he can and wishes to do so, from terminating the engagements of his men by notice, and renewing them at wages reduced by the amount of the employer's contribution.

S. 4 (2) —

(9) Any sum deducted by any employer from wages or other remuneration under this Schedule shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted.

This brings the employer within the provisions of the Larceny Act 1901, if he fraudulently abstains from paying it over. It also subjects him to all the civil liabilities of a trustee. This is in addition to the remedies provided in ss. 69, 70, and 110.

(10) The Insurance Commissioners may, by regulations, provide that in the case of outworkers the contributions to be paid may be determined by reference to the work actually done, instead of by reference to the weeks in which work is done, and any such regulations may apply to all trades or to any specified classes or branches of trades, and may determine the conditions to be complied with by employers who adopt such a system of payment of contributions.

"**The contributions to be paid.**"—It is submitted that this does not enable the Commissioners to vary the "employed rate" [see the Second Schedule under s. 4 (1) *supra*], but only the manner of collection and possibly the proportion to be paid by the employer and the contributor respectively. See Appendix I, 5 (*f*).

(11) For the purposes of this Schedule the expression "calendar week" means the period from midnight on one Sunday to midnight on the following Sunday.

(3) Contributions in respect of employed contributors shall cease to be payable on their attaining the age of seventy.

Cf. ss. 5 (2), 8 (3) and 79 *infra*.

(4) The employer of a person who though employed within the meaning of this Part of this Act is not insured under this Part of this Act by reason either—

S. 4 (4)

(*a*) that, not having previously been an insured person, he has became employed within the meaning of this Part of this Act after attaining the age of sixty-five; or

See s. 1 (4) and s. 49.

(*b*) that he has obtained and still holds a certificate of exemption under this Part of this Act;

See ss. 2 *supra* and s. 81 (3) *infra*. This subs. does not apply to cases under s. 51.

"**And still holds.**"—There does not seem to be anything to show the duration of such a certificate, nor how it is to be revoked.

shall be liable to pay the like contributions as would have been payable as employer's contributions if such person had been an employed contributor, and such contribution shall be carried to such account and dealt with in such manner as may be prescribed by regulations made by the Insurance Commissioners, and those regulations may provide for applying the sums standing to the credit of the account, or any part thereof, for the benefit of any persons in respect of whom contributions have been so paid, in the event of such persons subsequently becoming employed contributors.

"**As employer's contributions.**"—S. 49 (1), however, provides that, in the case there mentioned, he shall pay (and deduct) also the man's own contribution, just as in the case of an employed contributor.

"**Subsequently becoming employed contributors.**"—A man over 65 cannot become an employed contributor [s. 1 (4)]. See Appendix I, 5 (*b*).

Rates and rules for contributions by voluntary contributors.

5.—(1) The contributions payable by voluntary contributors shall be at the rate appropriate to their age at the date of their entry into insurance ascertained in accordance with a table to be prepared by the Insurance Commissioners (hereinafter referred to

as the voluntary rate) and shall be paid by the voluntary contributors at weekly or other prescribed intervals: S. 5 (1)

"**Voluntary contributors.**"—S. 1 (3) *supra*.

"**Shall be paid.**"—As to the manner of payment, see s. 7 *infra*, and Appendix I, 5 (*a*) and 13 (*a*).

Provided that—

(*a*) In the case of a person who enters into insurance within six months after the commencement of this Act, the voluntary rate shall, if he is below the age of forty-five at the date of entering into insurance, be the same as the employed rate, and if he is of the age of forty-five or upwards, be such rate, ascertained according to a table to be prepared by the Insurance Commissioners, as having regard to his age at that date, will be sufficient to cover seven-ninths, or, in the case of a woman, three-fourths, of the benefits conferred by this Part of this Act;

"**The commencement of this Act.**"—See s. 115 *infra*.

"**The employed rate.**"—See the Second Schedule under s. 4 (1) *supra*.

(*b*) Where a person, having been an employed contributor for five years or upwards, becomes a voluntary contributor, the rate of contribution payable by him shall continue to be the employed rate.

See s. 1 (3) (*b*).

(2) Contributions by voluntary contributors shall cease to be payable on their attaining the age of seventy.

Cf. ss. 4 (3) and 8 (3).

S. 6 (1)

Change from voluntary rate to employed rate and vice versâ.

6.—(1) Where an insured person has become a member of an approved society as a voluntary contributor, the rate of contributions payable in respect of him shall, notwithstanding that he becomes employed within the meaning of this Part of this Act, remain the voluntary rate, unless at any time after becoming so employed he gives notice in the prescribed manner of his wish to be transferred to the employed rate.

"**Approved society.**"—There is no provision as to the position of a voluntary contributor who has joined the Post Office Fund (s. 42), should he become employed: he will therefore be transferred to the employed rate.

(2) Where he gives such notice the rate payable in respect of him shall be the employed rate, but in such case the rate of sickness benefit payable in respect of him shall be such reduced rate as would have been payable had he not previously been insured, subject to such addition as may, according to tables prepared by the Insurance Commissioners, represent the value at that time of the contributions previously paid by him.

"**Sickness benefit.**"—See s. 8 (1) (a) *infra*.

"**Such reduced rate.**"—See s. 9 (4) *infra*, and Appendix I, 15 (6).

(3) Where he does not give such notice, and until he does so, the contributions payable by his employer in respect of him during any period of employment within the meaning of this Part of this Act shall be the same as if he had been transferred to the employed rate, and the contributions so paid by the employer shall be treated as in part satisfaction of the contributions at the voluntary rate payable by the contributor, and if the contributor fails to pay the balance he shall be deemed to be in arrear to that extent.

S. 6 (3)

"**Employment.**"—See the First Schedule *supra*.

"**Employed rate.**"—See the Second Schedule *supra*.

"**In arrear.**"—See s. 10 *infra*; but the provisions of that section are very difficult to apply to such a case: presumably, although he is now an employed contributor, his position will be dealt with by regulations under s. 10 (3), or under s. 10 (7).

(4) Where an employed contributor within five years from his entry into insurance ceases to be employed within the meaning of this Part of this Act and becomes a voluntary contributor, he shall be deemed to be in arrear, as from the date when he so became a voluntary contributor, to the amount of the difference between the aggregate contributions paid by or in respect of him since his entry into insurance and the aggregate of the contributions which would have been payable by him had he throughout been a voluntary contributor, and the difference between any reserve value which is credited to the approved society of which he is a member in respect of him and the reserve value (if any) which would have been credited to that society in respect of him had he originally become a voluntary contributor shall be cancelled.

"**Becomes a voluntary contributor.**"—Under s. 1 (3) (*a*) *supra*.

"**Deemed to be in arrear.**"—As to the method of calculation see s. 10 (3) and (7).

"**Which would have been payable,**"—*i.e.*, on the basis of the age at which he became an employed contributor, see s. 5 (1) *supra*.

"**Reserve value.**"—See s. 55 *infra*. It is difficult to see what difference there is to be in the respective reserve values where the man was under 45 at entry, within six months of the commencement of the Act, except such slight difference as may arise owing to the different manner of treating arrears in the two cases [s. 10, especially (3)]. If he was then over 45 he would have no reserve value.

Power to make regulations for the pay-

7. Subject to the provisions of this Act, the Insurance Commissioners may make regulations providing for any matters incidental to the payment and

S. 7

ment of contributions.

collection of contributions payable under this Part of this Act, and in particular for—

(*a*) payment of contributions whether by means of adhesive or other stamps affixed to or impressed upon books or cards or otherwise, and regulating the manner, times, and conditions in, at, and under which such stamps are to be affixed or impressed or payments are otherwise to be made;

"**Stamps.**—See s. [illegible] and Appendix I, s. [illegible]

(*b*) the entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards belong;

(*c*) the issue, sale, custody, production, and delivery up of books or cards and the replacement of books or cards which have been lost, destroyed, or defaced.

"**Sale.**"—It is apparently left to the Commissioners to say who is to pay for the books or cards so far as the express words of the Act go; but it is submitted that the Commissioners cannot by regulations require an insured person to obtain a card, and add a requirement that he shall pay for it, so extending the charges imposed upon the insured person by the Act (cf. 3 C. 1, c. 1, s. 10). So far as insured persons are concerned the distribution of cards must therefore be gratuitous; but the cost may possibly be imposed upon approved societies and deposit contributors as a part of the expenses of administration.

Benefits.

Benefits

8.—(1) Subject to the provisions of this Act, the benefits conferred by this Part of this Act upon insured persons are—

(*a*) Medical treatment and attendance, including the provision of proper and sufficient

medicines, and such medical and surgical appliances as may be prescribed by regulations to be made by the Insurance Commissioners (in this Act called "medical benefit"); S. 8 (1) (a)

For further provisions relating to "medical benefit," which considerably qualify the right of insured persons to treatment and attendance, see subss. (4), (6), s. (a) and ss. 14 (1) and 15 *infra*.

"**Medical.**"—It is not clear how far this is intended to include "surgical"; the decisions under the Apothecaries Act, 1815, and Medical Act, 1858, keep the two words distinct (see *Lemon* v. *Fletcher*, L.R. 8 Q.B. 319; *Apothecaries' Society* v. *Gregory*, 25 T.L.R., 37), but the Medical Act, 1886, requires the qualifications to be combined. Probably it includes such minor surgical treatment as a general practitioner would give, but not treatment which would ordinarily be given by a surgeon or a dentist [see Fourth Schedule, Part II (2), where dental treatment is made an "additional benefit," under (f) *infra*].

"**Medical treatment and attendance.**"—No definition is given of medical treatment and attendance. In the Medical Acts the term "medical practitioner" includes both physicians and surgeons, and as "surgical appliances" are to be provided the term "medical treatment" would appear to include some "surgical treatment." No limitation is placed in the Act on the *extent* of the treatment. It is to be "adequate," and to be defined in the regulations of the Commissioners [s. 15 (2)].

"**Medicines.**"—By s. 15 (5) "drugs" as well as medicines are to be provided, and the two words cover all medicaments for internal or external use. There is no definite line of demarcation between drugs and medicines, and certain articles often prescribed by medical men such as cod liver oil, alcohol in various forms, chemically prepared foods, vaccines and sera, and unless the regulations contemplated in s. 15 (5) carefully define what may be ordered the same difficulties will occur as Poor Law Medical Officers now experience.

"**Appliances.**"—This is the widest possible term and, subject to the regulations, might be taken to include spectacles, artificial limbs, trusses, and various expensive apparatus, cf. ss. 15 (5) and 12 (2) (*i*).

(*b*) Treatment in sanatoria or other institutions or otherwise when suffering from tuberculosis, or such other diseases as the Local Government Board with the approval of the Treasury may appoint (in this Act called "sanatorium benefit");

For further provisions relating to "sanatorium benefit," see ss. 12, 16, 17, and 64 *infra*.

S. 8 (1) (b)

"**Sanatoria.**"—The word sanatorium has come to mean generally an institution for the treatment of tubercular phthisis, more especially for incipient cases, though some sanatoria admit advanced cases. On the other hand the word is sometimes synonymous with "hospital": thus the Ladywell Sanatorium, near Manchester, is a municipal isolation hospital for infectious diseases.

"**Other institutions.**"—For example, ordinary hospitals or convalescent homes, or country homes for climatic treatment, &c.

"**Or otherwise.**"—These words allow of treatment of tuberculosis at patients' own homes, or at tuberculosis dispensaries or other non-institutional treatment. The payment of medical men for such treatment would be from the funds set apart for sanatorium benefit and would be separate from any payment for attending patients receiving medical benefit under s. 15. Apparently only *curative* treatment of tuberculosis is contemplated. County and Borough Councils pay special attention to measures intended to prevent tuberculosis, but no provision in this Act authorises Insurance Commissioners to incur expenditure on preventive measures except in the way of compiling statistics, making reports, providing for lectures, and publishing information on questions relating to health (s. 60), and so far as money provided by Parliament (one penny per insured person) may be applied by the Commissioners for the purpose of research (s. 16 (2)).

"**Tuberculosis.**"—That is, any disease caused by, or associated with, the *tubercle bacillus*, e.g., phthisis, spinal caries, tubercular disease of joints, bones, glands, skin, and internal parts of the body. As *lupus* is recognised as tubercular (Whitla's "Practice of Medicine"), the treatment by Röntgen Rays or Finsen Light would be included under sanatorium benefit.

"**Other diseases.**"—No indication is given as to what other diseases besides tuberculosis may be included under sanatorium benefit, as distinct from medical benefit. The terms of the Act are wide enough to allow of indefinite extension so that sanatorium benefit might eventually become a general hospital benefit.

(*c*) Periodical payments whilst rendered incapable of work by some specific disease or by bodily or mental disablement, of which notice has been given, commencing from the fourth day after being so rendered incapable of work, and continuing for a period not exceeding twenty-six weeks (in this Act called "sickness benefit");

(*d*) In the case of the disease or disablement continuing after the determination of sickness benefit, periodical payments so long

as so rendered incapable of work by the disease or disablement (in this Act called "disablement benefit"); S. 8 (1) (d)

For further provisions relating to "sickness benefit" and "disablement benefit" see subss. (2), (3), (4), (5), (6), (7) (*b*), (*c*), and ss. 9, 10, 11, 12, 13, 14, 38 (1) (*b*), 42, 44 (2), 45, 47 (4), (5), (6), and 48 (1) *infra*.

"Periodical payments."—It is left to the option of the society or committee administering the benefit to say when the first payment is to be made, and at what intervals subsequent payments will fall due [s. 14 (2)]. But the insured person has a right to payment at the specified rate for the whole period from the fourth day after the beginning of the illness until he is again able to provide his own maintenance.

"Rendered incapable of work,"—*i.e.*, totally unfit for any kind of work. There is no provision for the "partial incapacity" recognised by the Workmen's Compensation Act, 1906, First Schedule (1) (*b*), (15) and (16). This is also in contrast with the German scheme, in which invalidity allowance is made to insured persons unable to earn one-third of their normal wage. Such allowances may be made an additional benefit. See the Fourth Schedule, Part II (5) under (*f*) *infra*.

A question may arise as to whether a person who is already "unfit" can be said to be "rendered unfit" by any subsequent disease or disablement which may overtake him. For instance, a man with two wooden legs may easily contract typhoid fever. Would he be entitled to draw sickness benefit either if he is, or if he is not, already drawing disablement benefit in respect of the accident which deprived him of his legs? For the latter point cf. s. 11 (1) (*a*); for the former cf. subs. (5) and note the word "recovers." But the point is nowhere cleared up. There seems no conclusive reason why such a man should not be entitled to the full benefit in respect of the second illness, though he could not of course draw two benefits at the same time.

"Some specific disease." No technical meaning can be attached to this, it probably means some disease to which a recognised name can be given. A "specific disease" would no doubt be one cause of "bodily disablement"; but inability to work due to general debility or other cause which medical opinion cannot more precisely define, is no doubt intended to be included as "disablement."

"Bodily or mental disablement."—This includes accidents, but as to accidents where the right to compensation or damages already exists, see s. 11.

It also includes all forms of insanity, but as to cases confined in asylums, &c., see s. 12 *infra*.

"Of which notice has been given."—The giving of notice is a condition precedent to the payment of benefit, but it may be given at any time before the claim, though societies which insist upon early notice will have a better opportunity of testing claims.

"Commencing from the fourth day after being so rendered incapable of work," *i.e.*, the insured person must have been incapacitated for three clear days before he will be entitled to benefit. Days when the illness may have been coming on, but he has

S. 8 (1) (d) continued to follow his usual occupation, will not assist. On the other hand as notice may be given at any time before the claim for benefit it will be difficult to test the accuracy of the claimant's statement about the three days (subject to any medical report) except by inquiring whether he has actually absented himself from work.

(e) Payment in the case of the confinement of the wife or, where the child is a posthumous child, of the widow of an insured person, or of any other woman who is an insured person, of a sum of thirty shillings (in this Act called "maternity benefit");

For further provisions relating to "maternity benefit," see the Fourth Schedule, Part II (b) under (f) and subs. (4), (b), (d) (d'), ss. 10 (1), 12, 14, 18, 19, 20 and the Fourth Schedule, Part III under s. 44 (2) *infra*.

"**Confinement.**"—The word is left undefined and disputes may arise as to whether it includes abortion or miscarriage or premature labour as well as delivery at full term, nor is any precise meaning attached to it in medical works.

"In medical language the term *abortion* refers to the expulsion of a fœtus or an embryo before the viable period, that is before the sixth month of gestation; the term *miscarriage* is used synonymously. Delivery after the sixth month but before full term is called *premature labour*. Under the term *abortion*, the law includes both these periods" (*i.e.*, delivery at any period of gestation short of full term). (J. Dixon Mann's Forensic Medicine.)

"**The wife . . . the widow . . . any other woman.**"—In any case benefit would be payable although the child is illegitimate, but in the case of a married woman, not herself insured, it could apparently only be obtained on the claim of the husband; see s. 18 (1) *infra*.

Where the husband is an insured person the wife can only claim this benefit through his insurance, though insured herself. She may therefore lose this benefit through his arrears [s. 19 (1)], but cannot be deprived of it for any misconduct of his to which she was not a party [s. 14 (2) (f)].

"**Posthumous child.**"—The normal duration of gestation being 280 days, the widow of an insured person, being confined within 280 days after her husband's death, could claim maternity benefit. The accepted maximum duration of gestation varies in different countries: "In France and Italy it is 300 days; in Germany a child born within 302 days after the death of the husband is regarded as legitimate; in Scotland a child born ten lunar months after the death of the husband is considered legitimate. In England and America no limit is fixed and consequently the opinion of experts is taken and the entire question is discussed at every trial into which the subject enters. The longest gestation yet allowed by the English courts was 301 days" (Dixon Mann's Forensic Medicine.)

The question would not, however, be of importance where the woman is herself insured (as an employed contributor) or becomes so immediately after the husband's death (s. 44 *infra*). S. 8 (1) (*e*) —

(*f*) In the case of persons entitled under this Part of this Act to any of the further benefits mentioned in Part II of the Fourth Schedule to this Act (in this Act called "additional benefits"); such of those benefits as they may be entitled to.

"**Entitled.**"—See ss. 9 (2), 13, and especially 37, and cf. ss. 8 (9), 72 and 73 *infra*. The latter, however, have reference to additional benefits other than those here mentioned, though they may in fact be similar. Except in cases arising under s. 9 (2) only members of approved societies can become entitled to these additional benefits.

FOURTH SCHEDULE.

PART II.

Additional Benefits.

(1) Medical treatment and attendance for any person dependent upon the labour of a member.

"**Medical treatment and attendance.**"—Not strictly "medical benefit," but as being "in the nature of medical benefits" to be administered by the Insurance Committee under s. 14 (1).

"**Dependent.**"—See note to s. 2 (1) (*b*) and the definition in s. 79.

(2) The payment of the whole or any part of the cost of dental treatment.

See notes to subs. (1) (*a*) and to the last paragraph.

(3) An increase of sickness benefit or disablement benefit in the case either of all members of the society, or of such of them as have any children or any specified number of children wholly or in part dependent upon them.

"**An increase.**"—For the ordinary rates see Part I of this Schedule under subs. (2) *infra*.

"**Children wholly or in part dependent.**"—*i.e.*, in fact, not legally dependent; this refers to children up to the age of twenty-one [see *Thomisset* v. *Thomisset* (1894), P. 295].

(4) Payment of sickness benefit from the first, second, or third day after the commencement of the disease or disablement.

s. 8 (1) (2) "**First, second or third day.**"—Instead of the fourth day, see subs. (1) (c) *infra*.

(5) The payment of a disablement allowance to members though not totally incapable of work.

See note to subs. (1) (c) *infra*.

(6) An increase of maternity benefit.

See subs. (1) (e) *infra*.

(7) Allowances to a member during convalescence from some disease or disablement in respect of which sickness benefit or disablement benefit has been payable.

i.e., when the member is no longer "totally incapable of work," but when it would be better for his health that he should not return to work without convalescence.

(8) The building or hiring of premises suitable for convalescent homes and the maintenance of such homes.

"**Convalescent homes.**"—As distinct from sanatoria and other institutions for the treatment of actual disease (see note to subs. (1) (f) and s. 16).

(9) The payment of pensions or superannuation allowances whether by way of addition to old age pensions under the Old Age Pensions Act, 1908, or otherwise.

"**Pension or superannuation allowance.**"—See subs. (7) and cl. s. 73 (2) *infra*.

"**Old Age Pensions Act, 1908.**"—*i.e.*, 5*s.* a week or less; as to persons who are within this bill but excluded from the Old Age Act, 1908, see note to subs. (3) *infra*.

(10) The payment, subject to the prescribed conditions, of contributions to superannuation funds in which the members are interested.

See subs. (7) and s. 73 (2) *infra*.

(11) Payments to members who are in want or distress, including the remission of arrears whenever such arrears may have become due.

"**Arrears.**"—See s. 10, and note that by s. 10 (6) a society may in any case remit any arrears which accrue during unemployment, and would otherwise have been payable by the employer.

(12) Payments for the personal use of a member who, by reason of being an inmate of a hospital or other institution, is not in receipt of sickness benefit or disablement benefit.

See s. 12 *infra*.

(13) Payments to members not allowed to attend work on account of infection. S. 8 (1) (*f*)

i.e., where some infectious disease has broken out, either in the workshop, or in the member's own home or neighbourhood, and while not himself suffering from the disease (in which case he would be entitled to sickness benefit) he is prevented by his employer or under the Public Health Acts from going to work.

(14) Repayment of the whole or any part of contributions thereafter payable under Part I of this Act, by members of the society or any class thereof.

"**Contributions.**"—See s. 4 (1) and the Second Schedule *supra*.

"**Thereafter.**"—A member of an approved society cannot in any case [though a deposit contributor may, see s. 42 (*g*)], obtain a refund of past contributions.

(2) Subject to the provisions of this Part of this Act, the rates of sickness benefit and disablement benefit to which insured persons are entitled shall be the rates specified in Part I of the Fourth Schedule to this Act.

"**The provisions.**"—See note subs. (1) (*c*), (*d*) *supra*.

FOURTH SCHEDULE.

BENEFITS UNDER PART I OF THIS ACT RELATING TO HEALTH INSURANCE. Ss. 8, 9, 37, 44, and 81.

PART I.

Rates of Benefits.

TABLE A.—*Ordinary Rates.*

Sickness benefit: for men, the sum of 10*s.* a week throughout the whole period of 26 weeks; for women, the sum of 7*s.* 6*d.* a week throughout the whole period of 26 weeks.

Disablement benefit: the sum of 5*s.* a week for men and women alike.

For Table B see note to s. 9 (1), for Table C s. 9 (3), and for Table D s. 44 (2), *infra*.

(3) In the case of insured persons who have attained the age of seventy the right to sickness benefit and disablement benefit shall cease.

S. 8 (3) "**Sickness benefit and disablement benefit.**"—But the right to medical and sanatorium benefit continues throughout life, and the young wife of an insured person over 70 years old may receive maternity benefit. Provision will have to be made for these out of contributions paid before the age of 70 [ss. 4 (3) and 5 (2)].

"**Seventy.**"—When Old Age Pensions become payable under the Old Age Pensions Acts, 1908 and 1911 [s. 2 (1) of the Act of 1908] the following classes of persons are, however, excluded from the benefits of those Acts. All of these persons may, subject to various conditions, have been either "employed" or "voluntary" contributors under this Act:—

(1) Aliens. See ss. 2 (2) of the Act of 1908, 3 (1) of that of 1911, and 1 (2) and 45 of this Act. As regards female British subjects becoming aliens by marriage, see s. 45 (3).

(2) British subjects who have not had their residence in the United Kingdom for twelve out of the last twenty years before claiming the pension. See ss. 2 (2) of the Act of 1908, 3 (2) of that of 1911, and ss. 1 (2), 8 (4), 32 and 33 of this Act.

(3) Persons in receipt of incomes exceeding £31 10s. a year. See ss. 2 (3) and 4 of the Act of 1908, 2 of that of 1911, and s. 1 (3) and the First Schedule, Part II (g) of this Act.

(4) Lunatics in asylums. See s. 3 (1) (c) of the Act of 1908, and s. 12 of this Act.

(5) Persons who have habitually failed to make sufficient provision for the maintenance of themselves and those dependent on them. See s. 3 (1) (b) of the Act of 1908. It should be specially noticed that insurance under this Act would not of itself be sufficient "provision" to prevent a person from being disqualified for this reason for an Old Age Pension, because the "provision" required by Regulation 30 made under that Act is sickness benefit of not less than 12s. a week.

(6) Persons imprisoned without the option of a fine, disqualified for two years after release from prison under s. 4 (2) of the Act of 1911.

(7) "Inebriates" over 60 detained under the Inebriates Act, 1898, if the Court so direct. See s. 3 (3) of the Act of 1908 and s. 4 (3) of that of 1911.

(8) Persons actually in receipt of Poor Relief. See s. 3 (1) (a) of the Act of 1908, s. 4 (1) of that of 1911, and cf. s. 169 of this Act.

(4) No insured person shall be entitled to any benefit during any period when he is resident either temporarily or permanently outside the United Kingdom.

"**Resident either temporarily or permanently.**"—This apparently excludes the ordinary legal meaning of "resident" [see note to the First Schedule, Part I (b)], and means "physically present for however short a time." It would include the case of a person retaining his home in the United Kingdom but going abroad for a short period, whether for the purposes of trade, pleasure, or health. [Contrast the Old Age Pension Act 1911, s. 3 (2).] But although the sickness or disablement may arise abroad, the insured person can establish his title to benefits by returning to this country.

S. 8 (4)

Difficulties may possibly arise with regard to insured persons other than seamen while on sea voyages. It is very doubtful whether a person can be said to "reside," even temporarily, on a ship; but whether this is so or not, it seems clear that a ship on the high seas, or even in foreign territorial waters (*R.* v. *Carr and Wilson*, 10 Q.B.D. 76), provided she does not go into a river beyond the ebb and flow of the tide, is legally a part of the country to which she belongs (generally where she is registered). See *Marshall* v. *Murgatroyd* (L.R. 6 Q.B. 31.) Persons born on such a ship are legally settled in the parish of Stepney. Therefore, a person while on board a ship belonging to the United Kingdom is not deprived by this subs. of any benefits. As soon, however, as such a person goes ashore the subs. will apply. Moreover, neither compulsory nor voluntary insurance, except in the case of seamen [s. 48 (3) *infra*], is confined under this Act to British subjects or to residents in the United Kingdom. Persons, wherever resident, employed in the United Kingdom are by the First Schedule, Part I, compelled to become contributors. They will, however, lose their title to benefits if they return to reside at their homes or other places outside the United Kingdom.

If, however, they cease permanently to reside here they may in common with British subjects, under certain circumstances, take their transfer value, if members of approved societies, with them (ss. 31–33), or if deposit contributors recover a portion of their contributions [s. 43 (5)].

For the special position of men serving in the military or naval forces of the Crown, see s. 46 (4) (iii), and of seamen, s. 48 (12).

Provided that, if a person is temporarily resident in the Isle of Man or the Channel Islands, he shall not, whilst so resident, be disentitled to benefits other than medical benefit, and that, if with the consent of the society or committee by which the benefit is administered a person is temporarily resident outside the United Kingdom elsewhere than in the Isle of Man or the Channel Islands, the society or committee may allow him, whilst so resident, to continue to receive sickness or disablement benefit, and that a person resident out of the United Kingdom shall not be disentitled to maternity benefit in respect of the confinement of his wife, if his wife at the time of her confinement is resident in the United Kingdom.

"**Other than medical benefits.**"—This refusal of medical benefit to persons temporarily resident in the Isle of Man or the Channel Islands is simply owing to the difficulty which the local

S. 8 (4) insurance committees would have in making the arrangements prescribed by s. 15 (1) with medical practitioners in these places. But a person usually resident in London, for example, would retain his right to medical benefit while temporarily resident in Manchester, and the regulations will have to provide for such cases of temporary transfer.

"**If with the consent . . . disablement benefit.**"—The use of the word "continue" confines the operation of these words to cases in which the right to sickness benefit arose in the United Kingdom, Isle of Man, or Channel Islands, though the consent of the society or committee may apparently be obtained before or after going abroad. For illnesses contracted abroad no benefit can be obtained without returning home.

"**Disentitled . . . of his wife.**"—See s. 18 (1). Conversely there is nothing to disentitle him to maternity benefit, wherever the wife may be, if he is at the time resident in the United Kingdom, Isle of Man, or Channel Islands.

(5) Where an insured person, having been in receipt of sickness benefit, recovers from the disease or disablement in respect of which he receives such benefit, any subsequent disease or disablement, or a recurrence of the same disease or disablement, shall be deemed to be a continuation of the previous disease or disablement, unless in the meanwhile a period of at least twelve months has elapsed, and at least fifty weekly contributions have been paid by or in respect of him.

"**Having been in receipt of sickness benefit.**"—The subsection will apply, although at the time of recovery he has ceased to receive sickness, but is receiving disablement benefit.

"**Any subsequent disease or disablement.**"—Even if it is of quite a different nature and arises from an ascertainable new cause. Contrast with this s. 47 (5) and (6) *infra*.

(6) Where a woman confined of a child is herself an insured person, and is a married woman, or, if the child is a posthumous child, a widow, she shall be entitled to sickness benefit or disablement benefit (as the case may be) in respect of her confinement in addition to the maternity benefit to which she or her husband may be entitled, but, save as aforesaid,

a woman shall not be entitled to sickness benefit or disablement benefit for a period of four weeks after her confinement, unless suffering from disease or disablement not connected directly or indirectly with her confinement. S. 8 (6)

"**And is a married woman . . . a widow.**"—Whether or not her husband is or was himself an insured person. If he was not, she actually derives both benefits at the same time from her own insurance.

"**Posthumous child.**"—See note to subs. (1) (*e*) *supra*.

"**She shall be entitled . . . (as the case may be).**"—See, however, the Fourth Schedule, Part I, Table D, under s. 44 (2) *infra*, from which it appears that a married woman who is a voluntary contributor at the reduced rates provided in that section will *not*, in spite of these words, be entitled to sickness or disablement benefit for two weeks before or four weeks after her confinement, and, unless her husband is insured, will not be entitled to maternity benefit either [s. 44 (1)]. This subs. only applies, therefore, to a married woman if she is herself an employed contributor, though a woman who was insured before marriage, but is not a contributor at all after marriage, will be entitled to a special payment of 5*s*. a week for not more than four weeks after confinement, in addition to maternity benefit if her husband is insured [the Fourth Schedule, Part III, under s. 44 (2)].

"**Shall not be entitled . . . after her confinement.**"—The question whether confinement is included in "illness" was considered by Channell, J., in *Davies* v. *Ebbw Vale U.D.C.* (27 T.L.R. 543). He appears to have been of opinion that it is, for he said: "Pregnancy in itself was not illness; it was a natural condition, but a physical condition which was properly described . . . as 'an approaching illness.' If that approaching illness had been expected during the next week he thought he should be prepared to say that the plaintiff's absence was absence reasonably occasioned by the approaching illness." Although, however, pregnancy is not necessarily an illness, it may be, and a woman who is herself insured will clearly be entitled to sickness or disablement benefit if rendered incapable of work by any incident or complication of pregnancy.

"**Disease or . . . confinement.**"—In spite of any regulations disputes will often arise owing to the frequent impossibility of deciding whether a particular illness (such as pleurisy commencing say three weeks after confinement) is or is not due indirectly to confinement. No rules can be laid down and medical opinions will often differ.

Medical benefit shall not include any right to medical treatment or attendance in respect of a confinement.

"**Medical benefit . . . confinement.**"—This makes it clear that medical attendance and treatment at a confinement, that is, at the actual

S. 8 (6) delivery of the child, cannot be claimed as part of medical benefit from the practitioners on whose but an insured woman is (s. 15 (2) [illegible]), though apparently medicines and appliances may. In other words, medical attendance *at delivery* must be paid for separately. But it is not clear how long *before or after* usual delivery the insured woman will be entitled to medical benefit. Of course, if the woman herself is not insured either as an employed contributor or a voluntary contributor at reduced rates (s. 44 (2)) she cannot in any case claim medical benefit, unless the husband's society has been able to declare the additional benefit mentioned in the Fourth Schedule, Part II (C) [see under subs. (1) (*f*) *supra*.]

(7) Where a pension or superannuation allowance is payable by an approved society in whole or in part as an additional benefit under this Part of this Act or out of any fund to which contributions have been made in accordance with paragraph (10) of Part II of the Fourth Schedule to this Act, it may be made a condition of the grant of the pension or allowance that a member of the society shall, whilst in receipt of such pension or allowance, be excluded in whole or in part from his right to sickness benefit and disablement benefit, or to either of such benefits.

"**As an additional benefit.**"—See the Fourth Schedule, Part II (9) under subs. (1) (*f*) *supra*.

"**Any fund.**"—*Ib.*, cf. also s. 73 *infra*.

"**Be excluded . . . disablement benefit.**"—Cf. ss. 9 (2) and 13 *infra*.

(8) Notwithstanding anything in this Part of this Act, no insured person shall be entitled—

(*a*) to medical benefit during the first six months after the commencement of this Act;

"**The commencement.**"—See s. 115 *infra*, and note that after this time there will be no waiting period for medical benefit as there will be for sickness, disablement, and maternity benefits, *i.e.*, persons (even voluntary contributors) will be entitled to medical benefit immediately on entry into insurance.

Note also that there is no waiting period whatever provided for sanatorium benefit, though in practice it will be difficult to arrange for it (see ss. 16 and 64), before medical benefit is in operation.

(*b*) to sickness benefit unless and until twenty-six weeks have elapsed since his entry into

insurance, and at least twenty-six weekly contributions have been paid by or in respect of him ; S. 8 (8) (*b*)

(*c*) to disablement benefit unless and until one hundred and four weeks have elapsed since his entry into insurance, and at least one hundred and four weekly contributions have been paid by or in respect of him ;

But, as soon as the period has elapsed and the contributions have been paid, an insured person will be entitled to sickness and disablement benefit in respect of a disease or disablement which began after his entry into insurance, but before the twenty-six or one hundred and four weeks had elapsed, and even if he was able to satisfy the qualifications for insurance, *i.e.*, was in employment [s. 1 (2)] or engaged in some regular occupation [s. 1 (3) (*a*)]—in respect of a disease the seeds of which were in him before entry. He will not, however, be able to take advantage of s. 10 (4) (*a*) or (*c*), but must actually pay the contributions.

(*d*) to maternity benefit unless and until twenty-six, or in the case of a voluntary contributor fifty-two weeks have elapsed since his entry into insurance, and at least twenty-six, or in the case of a voluntary contributor fifty-two weekly contributions have been paid by or in respect of him.

(9) As soon as the sums credited to approved societies as reserve values in respect of periods who enter into insurance within one year after the commencement of this Act have been written off in manner provided by this Part of this Act, the benefits payable to insured persons under this Part of this Act shall be extended in such manner as Parliament may determine.

"**Credited . . . reserve values.**"—S. 55 (2) *infra*. Note, however, that there is nothing in that subs. to confine its operation to persons who enter into insurance within one year after the commencement of this Act, and there may well be cases [see *e.g.*, ss. 5 (1), 9 (4)

S. 8 (8) and 14 (9)] which may require s. 55 to remain indefinitely in operation. That is not, however, to delay the operation of this subsection.

"**Written off**."—See s. 55 (4). The minimal period is about eighteen years.

"**Extended**."—This is something beyond the additional benefits [subs. (1) (f) *supra*] which may be given by a society or branch with a surplus (s. 32) after any triennial valuation, or, as alternatives to sickness and disablement benefit (s. 13), at once.

Reduced rates of benefit in certain cases.

9.—(1) In the case of insured persons who are under the age of twenty-one years and unmarried, sickness benefit and disablement benefit shall be at the reduced rates specified in Table B, in Part I of the Fourth Schedule to this Act:

Provided that where any such person being a member of an approved society, proves that one or more members of his family are wholly or mainly dependent upon him, the society shall dispense with such reduction.

"**Under the age of twenty-one**."—For the method of computing age, see s. 79 (8) *infra*. The rules will be found to the foll. Table A rates if the insured person acquires any of the three qualifications mentioned in this subs. while in receipt of benefit.

TABLE B.—*Reduced Rates in the case of Unmarried Minors.*

Sickness benefit—for males, the sum of 6*s.* a week during the first thirteen weeks, and the sum of 5*s.* a week during the second thirteen weeks.

for females, the sum of 5*s.* a week for the first thirteen weeks, and the sum of 4*s.* a week for the second thirteen weeks.

Disablement Benefit—for females, the sum of 4*s.* a week.

"**Dependent**."—See note to s. 2 (1) (*h*) *supra*.

(2) Where in the case of any insured persons the rate of sickness benefit or disablement benefit (as the case may be) exceeds two-thirds of the usual rate of wages or other remuneration earned by such persons, the rate of such benefit may be reduced to

such an extent as the society or committee administering the benefit, with the consent of the Insurance Commissioners, determines; but, where such reduction is made, provision shall be made by the society or committee, with the like consent for the grant of one or more additional benefits of a value equivalent to such reduction. S. 9 (2)

"**Exceeds two-thirds of the usual rate of wages or other remuneration.**"—See notes to the Second Schedule under s. 4 (1) *supra*.

"**Reduced.**"—It is not quite clear whether this may be done, either generally, or in the case of particular persons when the benefit is actually due, although the member had no notice of such intended reduction when he joined the society or became a deposit contributor. The use of the words "any insured persons" instead of "person" rather points to the view that the reduction must be general; even so, there is nothing to make it inapplicable to those who were members before it was made; if it is made by amendment of rule (see the Friendly Societies Act, 1896, s. 13) by a society which has in its original rules power to make amendments, it will be binding on all members (*Smith* v. *Galloway*, 1898, 1 Q.B. 71; *Burke* v. *Amalgamated Society of Dyers*, 1906, 2 K.B. 583). See Appendix I, 16 (*a*).

"**Society or committee . . . additional benefits.**"—*i.e.*, the benefits referred to in s. 8 (1) (*f*) and the Fourth Schedule, Part II. There is no other provision authorising a committee (*i.e.*, Insurance Committee, see ss. 4 and 59 *infra*) to grant such benefits. In the case of societies cf. s. 13.

(3) The rate of sickness benefit shall be reduced in accordance with Table C in Part I of the Fourth Schedule to this Act in the case of any insured person who becomes an employed contributor within one year after the commencement of this Act, and is at the date of so becoming an employed contributor of the age of fifty years or upwards and the number of weekly contributions paid by or in respect of him is, at the date of any claim by him for such benefit, less than five hundred.

TABLE C.—*Reduced Rates for Persons over Fifty in certain cases.*

Where the insured person is over 50 and under 60 at the time becoming an employed contributor—

S. 9 (3) For men, the sum of 7s. a week throughout the whole period of twenty-six weeks.

For women, the sum of 6s. a week throughout the whole period of twenty-six weeks.

Where the insured person is over 60 at the time of becoming an employed contributor—

For both men and women, the sum of 6s. a week for the first thirteen weeks, and 5s. a week during the second thirteen weeks.

"Employed contributor."—A voluntary contributor will suffer no such reduction, but will pay contributions sufficient to cover less months (or, in the case of a woman, three-fourths) of the value of the full benefits.

"The commencement of this Act."—July 15th, 1912, subject to s. 115 *infra*.

"Fifty years or upwards."—See s. 79.

"At the date of any claim."—A contributor can, if he wishes, postpone his claim until he has paid 500 contributions, but as they are "weekly contributions," 500 weeks must also have elapsed since his entry, in order to qualify him for the full rate; so it could only be worth doing if he had a few weeks to run.

(4) In the case of every person who, not having been previously insured under this Part of this Act, becomes an employed contributor subsequently to the expiration of one year from the commencement of this Act, and is, at the time of so becoming an employed contributor, of the age of seventeen or upwards, the rate of sickness benefit to which he is entitled shall (unless he proves that his time since he attained the age of seventeen has been spent in a school or college, in indentured apprenticeship or otherwise under instruction without wages, or otherwise in the completion of his education, or unless he undertakes himself to pay the difference between the voluntary rate and the employed rate, or pays to the Insurance Commissioners, to be credited to the society, such capital sum as will be sufficient to secure him benefits at the full rate) be

such reduced rate as may be fixed in accordance with tables to be prepared by the Insurance Commissioners, but not in any case less than five shillings a week: S. 9 (4)

"**Previously insured.**"—Whether as an "employed" or "voluntary" contributor [see, however, s. 6 (1)]; it is rather doubtful what is the position of a person who, having been employed within the meaning of the Act, has had no contributions paid on his behalf owing to the default (with or without his own concurrence) of his employer; see ss. 1 (1) and 70 (1).

"**The commencement of this Act.**"—July 15th, 1912, subject to s. 115 *infra*.

"**Seventeen or upwards.**"—See s. 79 *infra*.

"**His time . . . has been spent in a school or college.**"—This is doubtless not intended to be confined to boarders in such institutions, but it is not clear in the case of attendance by non-boarders what amount of time must be so spent, *e.g.*, whether attendance at evening continuation classes would be sufficient.

"**Apprenticeship . . . without wages.**"—This is specially excepted from the employments in the First Schedule, Part I (*a*), under s. 1 (2) *supra*.

"**Undertakes.**"—If he fails to keep such an undertaking he will be in arrears, s. 10. See Appendix I, 13 (*c*).

"**The difference between the voluntary rate and the employed rate.**"—See ss. 4 (1), 5 (1) and 6 *supra*.

Provided that if at any time subsequently such person would become entitled to sickness benefit at a higher rate if he were treated as having become an employed contributor as from the time when he attained the age of seventeen, or as from the expiration of one year after the commencement of this Act, whichever date may be the later, and as being in arrear for all contributions which, had he become an employed contributor at that date, would have been payable in respect of him between that date and the date when he actually became an employed contributor, he shall, if he so elects, be entitled to be so treated.

See s. 10 (2) and the Fifth Schedule *infra*.

The effect of this may be shown by an example:

A is seventeen on August 1st, 1912; he becomes an employed

S. 9 (4) — contributor on October 1st, 1912, he may be treated as being then in arrear from July 15th, 1912 (*i.e.*, eleven weeks), he becomes entitled to sickness benefit on July 15th, 1912; he is five weeks on the average in arrear since the date when he ought to have entered into insurance (disregarding parts of a week). His rate of sickness benefit (see the Fifth Schedule) is 9*s.* a week; he is entitled to elect whether he will be paid at the rate specified in the tables to be prepared by the Insurance Commissioners under this subs.

If he does not attain the age of seventeen until after July 15th, 1912, he will be treated as being in arrear from his seventeenth birthday.

The value of this right of election to the insured person depends of course upon the relation between the amount of arrears, as at calculated, and the periods between the dates when he should have entered into insurance and when he becomes entitled to benefit. Towards the end of his life these arrears would be negligible, because they would be spread over so long a period.

Reduced rates of benefits where contributions are in arrear.

10.—(1) Where an insured person being a member of an approved society is in arrear to an amount greater than thirteen weekly contributions a year on the average since his entry into insurance, his right to benefits under this Part of this Act other than medical benefit, sanatorium benefit, and maternity benefit shall be suspended, and, where he is in arrears to an amount greater than twenty-six weekly contributions a year on the average since his entry into insurance, his right to medical benefit, sanatorium benefit, and maternity benefit shall be suspended, and at the expiration of the calendar year next after the date when he becomes suspended from all benefits any sums credited to the society in respect of him, calculated in the prescribed manner, shall, if his right to benefits still continues to be suspended, be carried to such account and dealt with in such manner as may be prescribed for the benefit (except so far as such sums comprise sums in respect of a reserve value) of the society or any other society to which such person may subsequently be transferred:

"**In arrear . . . on the average.**"—As to the mode of calculation, see subs. (7) *infra*, but it appears from the Fifth Schedule (see next subs.), that parts of a week are to be ignored. See Appendix I, 6 (*a*).

S. 10 (1)

"**Entry into insurance.**" This will presumably date from the payment of the first contribution, but in the case of an employed contributor it might date from the first day of the week or other period in respect of which the contribution is paid.

"**Suspended.**"—But "the suspension of a member of an approved society from benefits under this Part of this Act shall not be deemed to deprive the member of his membership . . . for the purposes of this Part of this Act." (s. 79.)

"**At the expiration of the calendar year.**"—*i.e.*, the period of grace is from the date when his arrears reach the level above stated until the following December 31st, and twelve months beyond that.

"**Credited.**"—See ss. 55 (4) and 56 (1) *infra*.

"**Reserve value.**"—See s. 55, apparently such sums are to be written off the reserve values so credited.

Provided that, if at any time after suspension from any such benefits he becomes employed within the meaning of this Part of this Act, he shall be entitled to those benefits at such rate, after the lapse of such time and after the payment of such number of contributions, as would have been applicable to his case had he not previously been an insured person, but, if he so elects at any time, the benefits to which he is entitled shall be such as he would be entitled to, were the period from the time of his original entry into insurance taken as a whole.

"**Such rate.**"—See s. 9 (4), to which this proviso is a corollary.

"**The lapse . . . contributions.**"—See s. 8 (8) (*b*) (*c*) (*a*).

"**Were the period . . . taken as a whole,**" *i.e.*, apparently, counting as arrears not only those which had accumulated before his suspension, but the whole period between that suspension and his again becoming "employed."

(2) Where an employed contributor claiming sickness benefit is at the date of such claim in arrears, but the arrears are less than as aforesaid, then the rate of sickness benefit shall be reduced to a sum not less than five shillings a week, or the time when sickness benefit commences deferred, proportionately to the amount of arrears in accordance with the table in the Fifth Schedule to this Act.

s. 10 (2) This arrangement with regard to arrears differs from that of most existing friendly societies which take no account of length of membership, in that it is based upon a sliding scale, so that the longer a member has been insured the longer he can go in case of unemployment or otherwise without paying contributions or suffering either reduction or suspension of benefits. A man who has contributed regularly since the age of 16, if he retires on a pension or otherwise at 56, might remain in full benefit for the rest of his life without further payment. This is however, subject to the definition of "temporary unemployment" in s. 70, from which it appears that after twelve months a member is to be treated as a voluntary contributor, unless he satisfies the society "that his unemployment is due to inability to obtain employment, and is not due to any change in his normal occupation." His arrears would then be calculated in accordance with rules to be made under subs. (3). On the other hand, an employed contributor cannot, while he remains employed, fall into arrear except by default of his employer.

FIFTH SCHEDULE.

Reduction or Postponement of Sickness Benefit Where Contributions are in Arrear.

TABLE.

(1) Where the Arrears Amount to	(2) Rate of Sickness Benefit. Men.	Women.
	s. d.	s. d.
4 years' business a year on average	9 6	7 3
5 " " " "	9 0	7 0
6 " " " "	8 6	6 9
7 " " " "	8 0	6 6
8 " " " "	7 0	6 3
9 " " " "	7 0	6 0
10 " " " "	6 6	5 9
11 " " " "	6 0	5 6
12 " " " "	5 6	5 3
13 " " " "	5 0	5 0
For both Men and Women	5s. 0d., commencing 5th day after commencement of illness.	
	" " 6th " "	
	" " 7th " "	
	" " 8th " "	
	" " 9th " "	
	" " 10th " "	
	" " 11th " "	
	" " 12th " "	
	" " 13th " "	
	" " 14th " "	

Notes. S. 10 (2)

Where the insured person is by virtue of any of the provisions of Part I of this Act, other than those relating to arrears, entitled to sickness benefit at a rate lower than the full rate, this Table shall have effect as if the entries in the first column were so shifted down that the first entry therein was set opposite the entry in the second column, next below the entry specifying the rate of sickness benefit to which the insured person is entitled.

When the rate of sickness benefit during the first thirteen weeks to which the insured person is entitled is, by virtue of any of the provisions of this Act, other than those relating to arrears, less than 5*s.* a week, this Table shall have effect as if such lower rate were therein substituted for the rate of 5*s.* a week.

"**Any of the provisions.**"—See ss. 5 (2), 9, 11 (1) (*a*), 13 (1), 14 (2), 58 (1) (*b*) (ii), 45 (2) and the Fourth Schedule, Part I, Tables B and C *supra*. The entries in the second column, which postpone the commencement of benefit, are applicable only to such cases.

"**Less than 5s. a week.**"—See the Fourth Schedule, Part I, Table B, the second thirteen weeks for females under 21.

The effect of this Table is that where an employed contributor is in arrear for more than three weeks on the average for every year since his entry into insurance, the rate of sickness benefit shall be reduced by 6*d.* for men, and 3*d.* for women, a week for every complete additional week for which he is so in arrear, until it is reduced to 5*s.* a week, and thereafter the commencement of benefit shall be postponed by one day for every such week of arrears.

(3) Where a voluntary contributor is in arrears he shall be liable to such proportionate reduction of benefits as may be prescribed.

This does not, however, affect the conditions on which his benefits may be completely suspended. These are the same for both employed and voluntary contributors [subs. (1) *supra*]. See Appendix I. 6 (*b*).

(4) In calculating arrears of contributions, no account shall be taken of any arrears accruing—

(*a*) during any period when the person in question has been, or but for this section or any other provision of the Act disentitling a person to such benefit would have

S. 10 (4) (a)

been, in receipt of sickness benefit or disablement benefit; or

See s. 8 (1) (c) (d); this is more generous than the existing practice of Friendly Societies.

"Any other provision . . . such benefit." See ss. 8 (3), (4), (6), (7), (8) (b), (c), 11, 12, 13 (1), 14 (2), 44 (1), 46 (2) (i), 47 (4) (a), (5), (6), 48 (1); see however note to s. 8 (8) (b) *supra*.

Although contributions unpaid during receipt of benefit are not accounted as arrears, there is nothing in the Act to prevent an insured person keeping up such contributions if he desires to do so for the purpose of qualifying for disablement benefit under s. 8 (8) (a), but an employer is under no obligation to contribute under such circumstances [Third Schedule, (1)].

(*b*) in the case of a woman who, being an insured person, is herself entitled to maternity benefit during two weeks before and four weeks after her delivery, or in the case of maternity benefit payable in respect of the posthumous child of an insured person during the period subsequent to the father's death; or

Cf. s. 8 (6) *supra*, where however no reference is made to the two weeks preceding delivery.

(*c*) in the case of an employed contributor during the first twelve months after the commencement of this Act;

but, save as aforesaid, contributions shall be deemed to be payable in respect of every week from the date of entry into insurance.

"The commencement."—July 15th, 1912, subject to s. 115 *infra*.

The employer is not, of course, absolved from his liabilities under s. 4.

"Deemed to be payable."—This does not however impose any enforceable liability upon an employed contributor to pay while unemployed.

(5) Where an insured person has paid any arrears of contributions payable by or in respect of him

which accrued during the calendar year current at the date of payment and the previous calendar year, he shall be treated for the purposes of this section as if the arrears so paid had never become due : S. 10 (5)

Arrears which accrued due at any earlier date can apparently never be paid off.

Provided that if such person is at the date of payment or subsequently within one month thereafter becomes incapable of work by reason of disease or disablement, he shall for the purposes of this section be deemed to be still in arrear in respect of the amount so paid until after the expiration of one month from the date of such payment.

At the expiration of the month he will be restored, even if the same illness continues, to full benefit, or to such rate as the payment entitles him to.

(6) Any approved society may, if it thinks fit, excuse any part of the arrears which may have accrued due by or in respect of any member who is an employed contributor during any period of unemployment not exceeding such part as would have been payable by the employer had the member continued in his last employment, and in such case the amount of the arrears of that member shall be reduced accordingly.

"**May . . . excuse.**" Whether the member pays the remainder himself, or not.

"**Such part . . . last employment.**" See the Second Schedule under s. 4 (1) *supra*. If the rate of remuneration does not exceed 2*s*. a working day there would be while the member was employed, a contribution of 1*d*. payable by the State ; this ceases to be so payable when the member becomes unemployed, and the society cannot under this subsection excuse payment of it. It will, therefore, unless the member pays it himself, count as arrears.

(7) The average amount of arrears for the purposes of this section shall be calculated in such

S. 10 (7) manner as the Insurance Commissioners may prescribe.

In particular the method of calculating arrears unpaid, where part has been excused under the last rules, and cases where the amount is a lump sum [e.g., under ss. 6 (3), (4) and 38 (1) (d)]. See Appendix I, 6 (c).

Provisions in the case of contributors entitled to compensation or damages.

11.—(1) Where an insured person has received or recovered or is entitled to receive or recover, whether from his employer or any other person, any compensation or damages under the Workmen's Compensation Act, 1906, or any scheme certified thereunder, or under the Employers' Liability Act, 1880, or at common law, in respect of any injury or disease, the following provisions shall apply :—

"**Any scheme.**"—See s. 3 of that Act.

"**Common Law.**" [e.g., negligence of the employer personally, or of any other person and his servants, breach of warranty in the sale of food, etc., assault, etc., etc.], see notes to s. 63 (1), (4) *infra*. This does not apply where the right to recover is given directly by any statute other than the two mentioned [e.g., the Coal Mines Regulation Act, 1887, s. 70]. But a right of action founded on a breach of Statutory duty may be a common law right.

(*a*) No sickness benefit or disablement benefit shall be paid to such person in respect of that injury or disease in any case where any weekly sum or the weekly value of any lump sum paid or payable by way of compensation or damages is equal to or greater than the benefit otherwise payable to such person, and, where any such weekly sum or the weekly value of any such lump sum is less than the benefit in question, such part only of the benefit shall be paid as, together with the weekly sum or the weekly value of the lump sum, will be equal to the benefit :

S. 11 (1) (a) —

"No sickness benefit or disablement benefit." — The section does not apply to medical benefit, even where the expenses of medical attendance are recoverable as special damage, as they would generally be at Common Law or under the Employers' Liability Act, 1880, or under the Workmen's Compensation Act, 1906, First Schedule (1) (a) (iii); although the fact that the insured person is entitled to medical attendance under this Act may prevent his recovering the cost from the person otherwise liable.

But see on this point, and generally as to the effect of insurance upon a claim for damages the judgment of Bramwell B. in *Bradburn v. Great Western Railway Company*, L.R. 10 Ex. 1; see also the Scottish case of *Morison v. Bartolomeo*, 5 Macpherson, 848; and as to the rights of the Insurance Committee, if it has been put to expense, see *Simpson v. Thomson*, 3 A.C., 279, 284.

The arrangements with medical practitioners under s. 15 will have to include [within the limits suggested under s. 8 (1) (a)] attendance and treatment in cases of accident. But a doctor, other than the one to whom the insured person is assigned, who attends him in an emergency, will have to recover his fee independently from the insured person, or from the Guardians under 11 & 12 Vict., c. 110, s. 2. See also notes to s. 8 (1) (c).

(*b*) The weekly value of any such lump sum as aforesaid may be determined by the society or committee by which the sickness and disablement benefits payable to such person are administered, but if the insured person is aggrieved by such determination, the matter shall be settled in manner provided by this Part of this Act for settling disputes between insured persons and societies or committees:

"In manner provided." — S. 67 *infra*.

(*c*) Where an agreement is made as to the amount of such compensation as aforesaid, and the amount so agreed is less than ten shillings a week, or as to the redemption of a weekly payment by a lump sum under the Workmen's Compensation Act, 1906, the employer shall, within three days thereafter, or such longer time as may be prescribed, send to the Insurance Com-

S. II (1) missioners, or to the society or committee concerned, notice in writing of such agreement giving the prescribed particulars thereof, and proviso (*d'*) to paragraph (9) of the Second Schedule of the Workmen's Compensation Act, 1906 (which relates to the powers of registrars of county courts to refuse to record memoranda of agreements and to refer the matter to the judge) shall, in cases where the workman is an insured person, apply to agreements as to the amount of compensation in like manner as to agreements as to the redemption of weekly payments by lump sums.

"**An agreement.**"—See the Workmen's Compensation Act, 1906, First Schedule (*A*).

"**As to the redemption.**"—(*a*) (*b*).

"**Within three days.**"—The Memorandum and Agreement cannot be registered until seven days after the Registrar of the County Court, to whom it has been sent by the applicant for registration, has sent notice to all the parties interested [*d*, Second Schedule (9, *a*) and Workmen's Compensation Rules, 1907 (43)].

"**Proviso (d) . . . to the judge.**"—The proviso is as follows:—

"Where it appears to the Registrar of the County Court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge, who shall, in accordance with the rules of the court, make such order (including an order as to any sum already paid under the agreement), as under the circumstances he may think just."

It will apparently be open to the Commissioners, society or committee, to supply to the registrar "information" on which he may act.

(2) Where an insured person appears to be entitled to any such compensation or damages as aforesaid and unreasonably refuses or neglects to

take proceedings to enforce his claim, it shall be lawful for the society or committee concerned, either— S. 11 (2)

"**Unreasonably.**"—A difference of opinion on this point would be a "dispute" to be settled in accordance with s. 67. The fact that the person against whom the claim is to be made is a man of straw, might be a sufficient reason, even if the claim is good, for not proceeding with it.

(*a*) at its own expense, to take in the name and on behalf of such person such proceedings, in which case any compensation or damages recovered shall be held by the society or committee as trustee for the insured person; or

"**At its own expense . . . as trustee for the insured person.**"—The effect of this is that the society or committee will be liable, if unsuccessful, to the whole costs, and if successful, to such costs as it may fail to recover in taxation from the opposite party, or as such party may be unable to pay.

(*b*) to withhold payment of any benefit to which apart from this section such person would be entitled.

In the event of the society or committee concerned taking proceedings as aforesaid, and failing in the proceedings, it shall be responsible for the costs of the proceedings as if it were claiming on its own account.

"**Responsible.**"—To the opposite party, as well as to the insured person.

(3) Nothing in this section shall prevent the society or committee paying to an insured person benefit by way of advance pending the settlement of his claim for compensation or damages, and any advance so made shall, without prejudice to any other method of recovery, be recoverable by

S. 11 (3) deductions from or suspension of any benefits which may subsequently become payable to such person.

Provisions in the case of contributors who are inmates of hospitals, &c.

12.—(1) No payment shall be made on account of sickness disablement or maternity benefit to or in respect of any person during any period when the person to or in respect of whom the benefit is payable is an inmate of any workhouse, hospital, asylum, convalescent home, or infirmary, supported by any public authority or out of any public funds or by a charity, or voluntary subscriptions, or of a sanatorium or similar institution approved under this Part of this Act.

"**Any public authority.**"—See note to the First Schedule Part II (*b*) under s. 1 (2) *infra*; as to hospitals provided by the Public Health Authority, see 38 and 39 Vict. c. 55, 94, 151, *cfr.*

"**Out of any public funds.**"—This probably includes institutions deriving a part only of their support from such funds.

"**A charity.**"—On the question of what is a charity, see *Commissioners of Income Tax v. Pemsell* (1891), A.C. 531.

(2) During such period as aforesaid the sum which would otherwise have been payable on account of any such benefit to or in respect of such person—

(*a*) shall be paid to or applied in whole or in part for the relief or maintenance of his dependants (if any) in such manner as the society or committee by which the benefit is administered, after consultation whenever possible with such person, thinks fit; or

"**In part.**"—The remainder being applied in accordance with the proviso *infra* pars. (*a*), (*b*).

"**Dependants.**"—The Insurance Committee or approved society are the judges as to who is a dependant, s. 79 *infra*.

The effect is that for insured persons admitted to voluntary hospitals who have any dependants, there is no provision for payment of cost of maintenance or payment of medical and surgical staffs, except that in the case of married women and widows drawing *both* sickness or

disablement benefit *and* maternity benefit, the maternity benefit *may* be paid to the hospital whether the woman has dependants or not. By s. 21 approved societies and Insurance Committees *may* give subscriptions or donations to voluntary hospitals. See also chap. IV, *supra*.

S. 12 (2) (*a*)

(*b*) if such person, being a member of an approved society, is an inmate of a sanatorium or similar institution in which he is receiving treatment in accordance with the provisions of this Part of this Act, and has no dependants, shall be paid to the Insurance Committee towards the general purposes thereof; or

See ss. 8 (1) (*b*) *supra* and 16 *infra*.

(*c*) if such person, being a member of an approved society, is an inmate of a hospital, asylum, convalescent home, or infirmary supported by charity or by voluntary subscriptions and has no dependants, shall, if an agreement for the purpose has been made between the society or committee and the hospital, asylum, convalescent home, or infirmary, be paid, in whole or in part, according to such agreement, towards the maintenance of such person in the hospital, asylum, convalescent home, or infirmary:

Provided that—

(i) any part of such sum which is not so applied as aforesaid may, if the society or committee thinks fit, be applied in the provision of any surgical appliances required for the insured person or otherwise for his benefit; and

(ii) if such an inmate as aforesaid is a married woman or widow, and the sums so

S. 12 (2) (c)

payable or applicable as aforesaid include the sums which would have been payable both on account of sickness or disablement benefit and on account of maternity benefit, no part of the sum which would otherwise be payable on account of maternity benefit shall be paid or applied for the relief or maintenance of her dependants, but such sum may be paid to the hospital, asylum, convalescent home, or infirmary of which she is an inmate as aforesaid in like manner as if she had no dependants.

(iii) Where any person who is entitled to any benefit under Part I of this Act, or a woman whose husband is entitled to maternity benefit in respect of her confinement, applies for admission to any workhouse infirmary, admission thereto shall not be refused on the ground only of the right to such benefit.

Where an inmate of an institution, not being a person in receipt of sanatorium benefit, has no dependants, no sickness or disablement benefit whatever is payable, and the funds of the society profit by the lapse. The society may, however, if it will, make a voluntary payment representing the whole or a part of such benefit to an institution supported by a charity or by voluntary contributions under subs. (2) (c), but it can do this only where there is an agreement with the institution for the reception of members of the society upon these terms.

Precisely the same observation applies to the maternity benefit of a woman who, being an employed contributor, is the wife of an insured person although she has dependants. Though the sickness benefit is in this case ear-marked for her dependants, the maternity benefit is forfeited to the society, which may give the whole or a part to the institution in which she is confined. It is for the society to decide whether the children, both of whose parents are employed contributors, are dependent upon the mother.

Power to vary benefits in certain cases.

13.—(1) Any approved society may submit to the Insurance Commissioners a scheme for substituting any of the additional benefits for sickness benefit

and disablement benefit or either of those benefits or any part thereof, and the scheme may provide as respects the members of the society to whom the scheme applies that any such benefits shall be abolished or the rate thereof reduced or, in the case of sickness benefit, the commencement thereof postponed; and the scheme may contain such incidental and consequential provisions as appear necessary for adapting the other provisions of this Part of this Act to the members to whom the scheme applies. S. 13 (1)

"**A Scheme.**"—Cf. s. 72. Under subs. (3) hereof, the Commissioners must be satisfied that the substituted benefits are of equivalent value to those abolished. S. 72 also requires a valuation of the scheme submitted, and the Insurance Commissioners in their Preliminary Memorandum issued on the 22nd of December, 1911, state that s. 72 "calls for the submission of actuarially certified schemes." It is, therefore, presumed that a scheme submitted under this section also must be actuarially certified, and as the onus of showing the value of the benefits is upon the promoters under subs. (3), the Commissioners will clearly be justified in requiring such a certificate.

"**For sickness benefit and disablement benefit.**"—The result of the entire abolition of sickness and disablement benefit by such a scheme would be to defeat the whole intention of the Act, as persons disentitled to these benefits would not be in any real sense insured against sickness. This section can, however, be used to modify these benefits in certain cases such as that of persons receiving payment during sickness as a term of employment, and so to make a much more elastic provision for such a case than that of s. 47.

(2) The scheme shall apply either to all members of the society or to any specified class thereof or to any members of the society who may elect to come under the scheme, according as may be provided by the scheme.

"**Any members of the society.**"—The advice given by their actuary, Mr. A. W. Watson, to the Manchester Unity of Oddfellows, as to their application of s. 72 is worth quoting in this connection:

"It must be clearly kept in view that members of Friendly Societies cannot be allowed to choose individually between the alternative forms of taking the Government Subsidy. If the choice were given to them, the weakly would naturally take extra sick pay, whilst the strong

s. 13 (3) would as materially raise the reduction of contributions or the deferred annuity. All the calculations depend upon averages, and if an option of this sort were allowed the averages would be completely upset, and the financial equilibrium of a scheme would be deranged, perhaps beyond redemption. Every society must choose for itself which plan it will adopt, and having made its choice must apply it to all its members."

(3) A scheme made under this section shall not have any effect unless and until confirmed by the Insurance Commissioners, and the Insurance Commissioners shall not confirm any such scheme unless satisfied that the value of the additional benefits conferred by the scheme is equivalent to the value of the benefits for which they are substituted, and that, in view of the special circumstances of the members or class of members intended to come under the scheme, there is good reason for substituting the additional benefits conferred by the scheme for the benefits for which they are substituted.

"Confirm."—See Appendix I, 16 (1).

"Equivalent."—See the note to sub-s. (1) *supra* and (4) *infra*.

(4) Nothing in this section or in any scheme made thereunder shall affect the amount of any reserve value to be credited to a society in respect of a member, and such reserve values shall be calculated as if the scheme had not been made.

"Reserve value."—See s. 54. This provision may lead to some inconvenience. The reserve value is the capitalised liability of the society to a new member, s. 55 (1), and the society is not allowed to refuse a new member on account of age alone, s. 30 (2), the State having undertaken that liability, s. 55 (2). But clearly if the sickness benefit payable at any time during life, a superannuation allowance, payable, say, at 60, be substituted, this allowance being so computed as to be of the same gross value for the members of the society as a whole, the reserve values in respect of the alternative benefits are very different at different ages. The reserve value of the sick pay will fall continuously after the age of 45, that of disablement benefit will fall from 50 on, while that of superannuation allowance will increase continuously up to the age at which the allowance becomes payable.

There are therefore two alternatives: either the scheme must provide that in the case of each new entrant the alternative benefit offered shall be of the same value as the one withdrawn, or else the society

must be prepared to meet the situation that the reserve values credited in respect of new members will be in some cases inadequate, and it may be absurdly inadequate, to meet the liabilities undertaken by the society in respect of them.

S. 13 (4) —

Administration of Benefits.

14.—(1) Sickness benefit, disablement benefit, and maternity benefit shall be administered, in the case of insured persons who are members of an approved society, by and through the society, or a branch thereof, and in other cases by and through the Insurance Committees; medical and sanatorium benefits shall in all cases be administered by and through the Insurance Committees, additional benefits shall be administered by the society or branch of which the persons entitled thereto are members, except where such benefits are in the nature of medical benefits, in which case they shall be administered by and through the Insurance Committees.

Benefits to be administered by approved societies or the Insurance Committee.

"In other cases."—*i.e.*, that of deposit contributors.

"Insurance Committees."—See ss. 59–62.

"Medical benefit . . . by . . . Insurance Committees."—This is modified by s. 15 (4), which allows the continuance of existing systems or institutions subject always to the free choice of doctor on the part of the beneficiary (see Chapter IV, *supra*).

(2) Subject to the provisions of this Part of this Act, an approved society may, with the consent of the Insurance Commissioners, provide for the application of its existing rules or make new rules with regard to the manner and time of paying or distributing, and mode of calculating, benefits, suspension of benefits, notices and proof of disease or disablement, behaviour during disease or disablement, and the visiting of sick or disabled persons, and for the infliction and enforcement of penalties (whether by way of fines or suspension of benefits

S. 14 (2) or otherwise) in the case of any member being an insured person who is guilty of any breach of any such rule, or of any imposition or attempted imposition in respect of any benefit under this Part of this Act, and may from time to time with the like consent alter or repeal any such rules; but—

"Rules."—See s. 37 (1). The society may, if it pleases, adopt the whole or part of the model rules published by the Insurance Commissioners, but it can in any way bound to do so.

(*a*) no fine imposed under any such rule shall exceed ten shillings or, in the case of repeated breaches of rules, twenty shillings;

"Fine."—Although the power of the society to fine is restricted by para. (*a*) of these rules it remains free to expel a member for breach of its rules [s. 40 (2)], but in such case is bound to hand over the transfer value of the member, [ss. 41 (1), 43 (1)], so that it cannot even by expulsion inflict pecuniary damage.

(*b*) no such rule shall provide for the suspension of any benefit for a period exceeding one year;

"Suspension."—It is the practice of most friendly societies to pay no benefits in venereal disease or disease caused by the misconduct of the claimant. Such a rule must be modified to conform to para. (*b*) hereof.

(*c*) every such rule relating to the visiting of insured persons by visitors appointed by the society shall provide that women shall not be visited otherwise than by women;

"Women."—As to male visitors see the proviso to s. 18 (1).

(*d*) every such rule relating to behaviour during disease or disablement shall be in the prescribed form;

(*e*) no such rule shall prescribe any penalty, nor shall any insured person be subject to any penalty, whether by suspension of benefit or otherwise, on account of the refusal by any such person to submit to a surgical operation, or vaccination, or inoculation of any kind, unless such refusal in the case of a surgical operation of a minor character is considered by the society, or on appeal the Insurance Commissioners, unreasonable; S. 14 (2) (*e*)

"**Vaccination.**"—Generally but not necessarily refers to inoculation against smallpox; the exemptions recently granted by magistrates in some districts are so numerous that a large proportion of the population will soon be unprotected against smallpox.

"**Inoculation.**"—Inoculation against various infectious diseases is rapidly becoming an ordinary part of medical treatment, and great exception has been taken to this permission to refuse inoculation of any kind, seeing that, for example, inoculation with diphtheria antitoxin is now recognised as the most efficacious treatment of diphtheria, while tuberculin inoculation for consumption is also a recognised method of treatment. It will, however, be in the power of the Insurance Committee to refuse to recommend a case for any other form of sanatorium benefit than this [s. 16 (3)].

(*f*) no such rule shall provide for inflicting as a penalty for breach of rules or imposition or attempted imposition on the part of an insured person suspension of maternity benefit in respect of the confinement of his wife, where his wife has not herself been guilty of any such breach, imposition, or attempted imposition.

"**Breach, imposition, or attempted imposition.**"—This need not have reference to the confinement, in fact there is nothing which definitely gives a society power to make rules as to the wife's conduct before or after confinement. But if the wife is a party to any other breach of rule or imposition by the husband, maternity benefit may be reduced or suspended.

(3) The Insurance Committee shall, subject to

S. 14 (1) the approval of the Insurance Commissioners, make rules in respect of any of the matters mentioned in the last preceding subsection with regard to the administration of benefits by the committee:

Provided that no such rule relating to anything to be done by, to, or through the Post Office shall be made without the consent of the Postmaster-General.

"The Post Office."—See s. 42 (8) a.

(4) Where, under any such rule as aforesaid, payment of sickness or disablement benefit is suspended on the ground that the disease or disablement has been caused by the misconduct of the person claiming the benefit, such person shall not thereby become disentitled to medical benefit.

"Disease or disablement caused by misconduct."—It is essential in the public interest that venereal disease and alcoholism should be adequately treated even if the sufferer is punished by deprivation of cash benefits.

(5) Where under any Act regulating the constitution of a society which becomes an approved society the rules of the society are required to be registered, any rules approved under this section by the Insurance Commissioners shall forthwith be registered, but till so registered shall have effect as if they had been duly registered.

"Under any Act."—See the Friendly Societies Act, 1896, ss. 9 (2), 13, and 19, and the Industrial and Provident Societies Act, 1893, ss. 5 (2), 6 (1) and 10 (2); see also ss. 28 (3), 33 (3), 25 and 26 hereof. These sections in effect make the registry of friendly societies a department of the Insurance Commission so far as approved societies are concerned, and the Registrar-General is himself a commissioner ex officio.

Administration of medical benefit.

15.—(1) Every Insurance Committee shall for the purpose of administering medical benefit make arrangements with duly qualified medical prac-

titioners in accordance with regulations made by the Insurance Commissioners. S. 15 (1)

See s. 8 (1) (*a*), and Appendix I, 7.

"**Make arrangements.**"—The phrase is no doubt intentionally vague. For instance, it would include an arrangement by way of capitation fee or of a separate fee for each attendance, or it leaves the society or committee free to make one arrangement for ordinary cases, and to call in a second opinion on special terms in special cases. The "arrangements" will necessarily include provisions as to the extent and range of the medical services that can be claimed and the method and amount of remuneration of the doctor. They may vary according to local circumstances, but must be submitted for the opinion of the Local Medical Committee (s. 62), and are always subject to the approval of the Commissioners.

Quære whether the Insurance Committees have power to include in these arrangements provision for certifying incapacity for the purpose of sickness and disablement benefit.

"**Duly qualified medical practitioner**"—*i.e.*, a person registered under the Medical Act (s. 34 of the Medical Act, 1858). By the Act of 1886, s. 2, a person cannot be registered since that year without having passed qualifying examinations in medicine, surgery, and midwifery, but persons registered before that year with any of the qualifications set out in Schedule A of the Act of 1858 (s. 15) are still to that extent qualified. As to ladies, see the Act of 1876, s. 1.

(2) The regulations made by the Insurance Commissioners shall provide for the arrangements made being subject to the approval of the Insurance Commissioners and being such as to secure that insured persons shall, save as hereinafter provided, receive adequate medical attendance and treatment from the medical practitioners with whom arrangements are so made, and shall require the adoption by every Insurance Committee of such system as will secure—

"**Save as hereinafter provided.**"—These words were inserted in the first instance to provide for cases mentioned in s. 15 (3) of insured persons who may be "required" or "allowed" to make their own arrangements for medical attendance. The words also cover cases mentioned in s. 15 (4) of persons who receive their medical attendance through existing systems or institutions; and also instances where the Commissioners may see fit to suspend medical benefit (proviso to s. 15 (2)).

"**Adequate.**"—The Commissioners are in all cases the final judges as to what is meant by *adequate* medical attendance.

S. 15 (a) (d)

(*a*) the preparation and publication of lists of medical practitioners who have agreed to attend and treat insured persons whose medical benefit is administered by the committee ;

Subs. (*a*), (*b*), (*d*), (*bb*), are intended to secure what is known as "free choice of doctor" for the insured. (A full discussion of the numerous questions arising will be found in Chapter IV *supra*.)

"**Agreed to attend.**"—An agreement in writing should set forth the range of the services, the ordinary remuneration, extra fees for mileage, night visits, surgical operations (if any), drugs and dressings supplied in emergencies, rules under which patients may be sent to hospitals, &c.

(*b*) a right on the part of any duly qualified medical practitioner who is desirous of being included in any such list as aforesaid of being so included, but where the Insurance Commissioners, after such inquiry as may be prescribed, are satisfied that his continuance in the list would be prejudicial to the efficiency of the medical service of the insured, they may remove his name from the list ;

"**Right of being included.**"—Inclusion of practitioners in the list follows automatically on an expression of their desire to be included. Any subsequent exclusion is only after due enquiry, and the Commissioners only, not the Insurance Committee, can remove a name from a list.

"**Inquiry.**"—The method of inquiry proposed by the British Medical Association is discussed in Chapter IV, *supra*, where a Special Medical Court of Appeal is suggested.

"**Prejudicial to the efficiency.**"—Purposely a very wide and general phrase.

(*c*) a right on the part of any insured person of selecting, at such periods as may be prescribed, from the appropriate list the practitioner by whom he wishes to be attended and treated, and, subject to the

consent of the practitioner so selected, of being attended and treated by him ; S. 15 (2) (c)

"**At such periods.**"—Annual or half-yearly periods have been suggested, change of doctor not being allowed at less intervals except for some serious reason sanctioned by the Insurance Committee.

"**Appropriate list.**"—*i.e.*, presumably the list of doctors for the area in which the insured person resides. In large county areas where District Committees are formed under s. 59 (4) there may be district lists prepared, and possibly, on the ground of the charges for mileage, the insured may be restricted to practitioners residing within a limited distance, unless the patients themselves agree to pay the extra mileage, or the practitioner forgoes it.

"**Subject to the consent.**"—There is no necessity for a practitioner, and generally it might not be advisable for him, to assign any reason why he refuses to accept any person as his patient.

(*d*) the distribution amongst and, so far as practicable, under arrangements made by, the several practitioners whose names are on the lists, of the insured persons who after due notice have failed to make any selection, or who have been refused by the practitioner whom they have selected ;

"**So far as practicable.**"—If the practitioners themselves fail to allot every insured person to a doctor on the list, the scheme formulated by the Insurance Committee and approved by the Commissioners will provide for the distribution.

"**After due notice.**"—Insured persons cannot be distributed among the practitioners on the list, until they have been notified that they must before a fixed date exercise their right of selection.

(*e*) the provision of medical attendance and treatment on the same terms as to remuneration as those arranged with respect to insured persons, to members of any friendly society which, or a separate section of which becomes an approved society who were such members at the date of the passing of this Act, and who are not entitled to medical benefit under this Part of this Act by reason either that they are of the age

S. 15 (2) (e)

of sixty-five or upwards at the date of the commencement of this Act or that being subject to permanent disablement at that date they are not qualified to become insured persons;

S. 15 (2) (e). There is an interesting history attached to this paragraph (e) as the persons here alluded to are not insured persons under the Act. The subsection is the result of a mutual arrangement between the British Medical Association and the Friendly Societies. (See Chap. IV, *supra*.)

Provided that, if the Insurance Commissioners are satisfied after inquiry that the practitioners included in any list are not such as to secure an adequate medical service in any area, they may dispense with the necessity of the adoption of such system as aforesaid as respects that area, and authorise the Committee to make such other arrangements as the Commissioners may approve; or the Commissioners may themselves make such arrangements as they think fit, or may suspend the right to medical benefit in respect of any insured persons in the area for such period as they think fit, and pay to each such person a sum equal to the estimated cost of his medical benefit during that period, and, where the Commissioners take any such action themselves, they shall retain and apply for the purpose such part of the sums payable to the Insurance Committee in respect of medical benefit as may be required.

"**Provided that.**"—This has been called the "strike-breaking" provision, which may be used by the Commissioners if the practitioners in any area refuse to form a panel. (See Chapter IV, *supra*.)

"**After inquiry.**"—Presumably after representations by the Insurance Committee that it has been unable to prepare a satisfactory list of practitioners for its area. The method of inquiry is not stated.

S. 15 (2) (e)

"**Adequate.**"—That is either in point of the number of practitioners willing to serve on the panel on their professional standing.

"**System as aforesaid.**"—That is, the system of "free choice of doctor" described in pars. (*a*), (*b*), (*c*), (*d*), s. 15 (2).

"**Such other arrangements.**"—For example, the Commissioners might replace the system of free choice of doctor by a system of salaried (whole-time or part-time) medical officers specially appointed either by the local Insurance Committee or by the Commissioners themselves.

"**Suspend the right.**"—The effect of this on the medical profession is fully discussed in Chapter IV; it would practically induce the approved societies themselves to form medical clubs for their members outside the Act.

"**Any insured persons.**"—Not necessarily *all* the insured in the area. *Eg.*, if the practitioners in the area refused to enter into arrangements for attending persons with an income of over £2 a week, the suspension of medical benefit might be applied to such persons only.

"**Estimated cost.**"—It is difficult to see how this could be estimated except by taking an average of the amount paid to practitioners in other and similar areas. There is no restriction named as to the use to which the sum paid shall be put.

(3) The regulations made by the Insurance Commissioners shall authorise the Insurance Committee by which medical benefit is administered to require any persons whose income exceeds a limit to be fixed by the Committee, and to allow any other persons, in lieu of receiving medical benefit under such arrangements as aforesaid, to make their own arrangements for receiving medical attendance and treatment (including medicines and appliances), and in such case the Committee shall, subject to the regulations, contribute from the funds out of which medical benefit is payable towards the cost of medical attendance and treatment (including medicines and appliances) for such persons sums not exceeding in the aggregate the amounts which the Committee would otherwise have expended in providing medical benefit for them.

S. 15 (3) — This is generally known as the "Addison" amendment, as it was proposed in the House of Commons by Dr. Addison, M.P., after consultation with the British Medical Association. (See Chap. IV.)

"**Shall authorise . . . to require.**"—The Commissioners are under compulsion to authorise in their regulations the Insurance Committees, but the Committees are not under compulsion, to fix an income limit, though by s. 62 they are bound to "*consult*" the local medical committees when the question of fixing an income limit arises. (For the difference between the operation of this section and the preceding proviso to s. 2 for suspending medical benefit, see Chap. IV *infra*.)

"**Allow any other person.**"—That is irrespective of any income limit. Primarily intended to meet the case of insured persons who desire to be medically attended by practitioners who are not included in the panel.

"**Make their own arrangements.**"—There is nothing to forbid such private arrangements being made with unqualified persons such as herbalists, provided that the approved society of which the insured person is a member is willing to accept certificates for sickness and disablement benefit from such unqualified persons.

"**Towards the cost of medical attendance, &c.**"—That is, the contribution cannot be used for any other purpose. It thus differs from the sum paid when medical benefit is "suspended" under the proviso and s. 15 (2), on the use of which there is no restriction. *Query*, however, whether in the case of a hospital nurse receiving free medical attendance, the Insurance Committee need inquire as to her payments before handing her the contribution. Hospitals would be well advised in this case to make a fixed charge upon the nurses for medical services equal to the cost of the statutory benefit, and to add the like sum to their wages.

"**Not exceeding in the aggregate.**"—For example, if the agreed amount for medical benefit is 6s. per year per insured person, the Insurance Committee shall pay not more than 6s. a year "in the aggregate" to persons "required" or "allowed" to make their own arrangements. But it is submitted that more than 6s. might be paid in any one year to a person who had made no claim in the previous year and had therefore 12s. to his credit. Any further cost incurred by such persons must be paid by themselves.

(4) The regulations shall provide that, in the case of persons who are entitled to receive medical attendance and treatment under any system or through any institution existing at the time of the passing of this Act, and approved by the Insurance Committee and the Insurance Commissioners, such medical attendance and treatment may be treated as, or as part of, their medical benefit under this Part

of this Act, and may provide for the Committee contributing towards the expenses thereof the whole or any part of the sums which would be contributed in the case of persons who have made their own arrangements as aforesaid, so, however, that such regulations shall secure that no person be deprived of his right, if he so elects, of selecting the duly qualified medical practitioner by whom he wishes to be attended and treated, in accordance with the foregoing provisions of this section. S. 15 (4)

This subsection was known during the discussion on the National Insurance Bill as the "Harmsworth" Amendment and greatly objected to by the British Medical Association as it considerably modifies the provision of s. 14 (1), which gives the administration of medical benefit to the local Insurance Committees. It was originally introduced to protect existing medical institutes which are formed by affiliations of friendly societies and other societies, but it is capable of wider application. There are at present about 100 medical institutes, about 30 of them having buildings of their own, and with a total membership of about 300,000. They provide general domiciliary medical attendance and are staffed mostly by salaried whole-time medical officers. Some of them are well-conducted, but many of them are boycotted by the local medical men for various reasons. (See Chap. IV *supra*.)

"**Any system.**"—A generic word which may be held to allow of indefinite multiplication of separate medical institutes or medical clubs, grouped under one existing system, and acting independently of the Insurance Committees, provided that the system itself is approved by the Committee and the Commissioners.

"**Treated as, or as part of.**"—That is, if the provision for medical attendance and medicines made by the institute falls short of what the Insurance Committee itself provides for other persons, the contribution from the Committee towards the cost of the institute may be proportionally reduced.

"**Towards the expenses.**"—This involves that the institute would not be allowed to make any profit for other purposes out of the contribution given by the Insurance Committee.

"**As aforesaid.**"—Refers to the provision in the last section [s. 15 (3)].

"**So however that.**"—This proviso to the end of the section was inserted at the request of the British Medical Association. Most of the medical institutes employ one, or rarely several, whole-time medical officers to attend all the local members of the affiliated societies, and the proviso is to secure that the members shall not be deprived by any rules of their societies of the right of insured persons to free choice of doctor given by s. 15 (2) (c).

S. 15 (5) (5) Every such Committee shall also make provision for the supply of proper and sufficient drugs and medicine and prescribed appliances to insured persons in accordance with regulations made by the Insurance Commissioners, which shall provide for the arrangements made being subject to the approval of the Insurance Commissioners, and being such as to enable insured persons to obtain from any persons, firms, or bodies corporate with whom arrangements have been made such drugs, medicines, and appliances if ordered by the medical practitioner by whom they are attended, and shall require the adoption by every Insurance Committee of such a system as will secure—

(*a*) The preparation and publication of lists of persons, firms, and bodies corporate who have agreed to supply drugs, medicines and appliances to insured persons whose medical benefit is administered by the Committee, according to such scale of prices as may be fixed by the Committee;

(*b*) A right on the part of any person, firm, or body corporate desirous of being included in any such list as aforesaid, of being so included, for the purpose of supplying such drugs, medicines, and appliances as such person, firm, or body corporate is entitled by law and authorised by the Committee to supply, except in cases where the Insurance Commissioners after inquiry are satisfied that the inclusion or continuance of the person, firm, or body corporate in such list would be prejudicial to the efficiency of the service:

"**Proper and sufficient.**"—The Insurance Committee will apparently be able to make, subject to the approval of the Commissioners, a list of drugs considered to be "proper and sufficient," and so to prevent the waste of the Insurance Funds on expensive proprietary drugs. S. 15 (5) (*b*) —

"**Drugs and medicines.**"—See note on s. 8 (1) (*a*).

"**Any persons.**"—Proviso (iii) limits the arrangements to persons, firms or bodies legally entitled to act as chemists and druggists.

"**If ordered by.**"—The insured cannot, as part of medical benefit, without a prescription from a doctor, whether on the list or not [see ss. 8 (6), 15 (3), (4)], obtain any medicines from a chemist.

"**Scale of prices.**"—It would appear that payment to the chemist for each separate article is intended; the Pharmaceutical Conference is opposed to contract arrangements under which the chemists would be expected to supply whatever is ordered by the doctors at a capitation rate.

"**Right of being included.**"—Compare the similar provision in s. 15 (2) (*b*), applying to medical practitioners.

Provided that—

(i) If the Insurance Commissioners are satisfied that the scale of prices fixed by the Committee is reasonable, but that the persons, firms, or bodies corporate included in any list are not such as to secure an adequate and convenient supply of drugs, medicines, and appliances in any area, they may dispense with the necessity of the adoption of such system as aforesaid, as respects that area and authorise the Committee to make such other arrangements as the Commissioners may approve;

Compare similar proviso about medical practitioners in s. 15 (2). It is unnecessary to repeat here the proviso about suspending medical benefit.

(ii) Except as may be provided by regulations made by the Insurance Commissioners, no arrangement shall be made by the Insurance Committee with a medical practitioner under which he is bound or

S. 15 (5) (ii)

agrees to supply drugs or medicine to any insured persons;

"Except as may be provided."—For example, in country districts where there are no chemists convenient it may be necessary for the Insurance Committee to agree with medical practitioners on the panels to supply drugs and medicines.

This section is intended to discourage dispensing by medical practitioners on the panels, and to provide for insured persons obtaining proper medicines, &c., from qualified chemists according to prescriptions given by medical practitioners. It provides also a "free choice of chemist" for the insured, in the same way as "free choice of doctor" is provided by s. 15 (2).

(iii) Subject to the regulations made by the last foregoing proviso the regulations shall prohibit arrangements for the dispensing of medicines being made with persons other than persons, firms, or bodies corporate entitled to carry on the business of a chemist and druggist under the provisions of the Pharmacy Act, 1868, as amended by the Poisons and Pharmacy Act, 1908, who undertake that all medicines supplied by them to insured persons shall be dispensed either by or under the direct supervision of a registered pharmacist or by a person who, for three years immediately prior to the passing of this Act, has acted as a dispenser to a duly qualified medical practitioner or a public institution;

"Acted as a dispenser."—This safeguards the large number of dispensers to medical men, who have no legally recognised qualifications for dispensing.

(iv) Nothing in this Act shall interfere with the rights and privileges conferred by the Apothecaries Act, 1815, upon any person qualified under that Act to act as an

assistant to any apothecary in compounding and dispensing medicines. S. 15 (5) (iv)

"**Assistant to apothecary.**"—Even though such person may not be a registered pharmacist.

(6) There shall in each year be paid to the Insurance Committee for each county or county borough out of moneys credited to a society which has members resident in the county or county borough such sum in respect of the medical benefit of such members and the cost of administration thereof as may be agreed between the society and committee or, in default of agreement, may be determined by the Insurance Commissioners.

"**Out of moneys credited to a society.**"—*i.e.*, under s. 54 (1) *q.v.* The society has no say in the matter, so that the medical profession has in effect a first charge on the insurance funds. Cf. s. 42 (*e*).

"**Such sum as may be agreed.**"—When there is a local medical committee it must be consulted upon these agreements (s. 62).

The Act nowhere defines the sum to be paid for medical benefit, nor the parts of such sum which are to be assigned to doctors and druggists. In framing the Act it was, however, assumed that 6*s.* per annum would suffice, having regard to the fact that 3*s.* 7½*d.* was the average rate for contract work under clubs and societies. The Government actuaries were accordingly instructed to prepare their estimates upon that basis, and accordingly assigned 1·51*d.* out of the contribution of 7*d.* for men and 6*d.* for women for the cost of medical benefit (Parly. Paper, Cd. 5983 of 1911). It will be observed that this assessment of 1·51*d.* involves the assumption that on the average 48 weekly contributions will be paid in the year. Having estimated the cost of the other benefits, a margin of ·42*d.* in the case of men, or 1*s.* 8*d.* in the year; and ·53*d.* in the case of women, or 2*s.* 1½*d.* in the year, remains unallotted. But the contribution assigned for sickness benefit itself contains a margin of not less than 10 per cent. due to the withholding of benefit for the first three days and to the fact that the tables of expectation of sickness are derived from recent experience of the Manchester Unity of Oddfellows without allowance for the fact that the Manchester Unity experience includes industrial accidents, which do not rank for benefit under the Act. The whole of the margin expressly assigned in the actuarial tables ought therefore to be available either for additional benefits or for the cost of medical service; and it appears possible that 7*s.* for men and 7*s.* 6*d.* for women might be assigned for the cost of medical benefit without rendering the scheme insolvent.

(7) If in any year the amount payable to an

S. 15 (7) Insurance Committee in respect of all persons for the administration of whose medical benefit it is responsible is insufficient to meet the estimated expenditure thereon, the Committee may, through the Insurance Commissioners, transmit to the Treasury and to the council of the county or county borough an account showing the amount so payable and the estimated expenditure, and the Treasury and the county council or the council of the county borough may, if they think fit and if satisfied that the amounts so payable and the proposed expenditure are reasonable and proper in the circumstances, sanction the expenditure.

"**The amount payable**"—i.e., under subs. (6) hereof and under s. 42 (8), 65 (1).

"**Estimated expenditure.**"—This applies to such ordinary expenditure as that of providing higher fees for medical practitioners. For extraordinary expenditure rendered necessary by excessive sickness caused by the default of a local authority see s. 63.

"**May . . . if satisfied . . . sanction the expenditure.**"—Neither Treasury nor county or borough council has any power to sanction such expenditure or to defray any part of it unless jointly satisfied that it is reasonable and proper. Having been so satisfied they are perfectly free absolutely to withhold their sanction, and there is no indication of what is to happen if Treasury and council disagree. The sanction of both is necessary before either is free to make good any part of such expenditure. Compare the similar provision as to sanatorium benefit in s. 17 (2) and (3). Councils contributing under this section may have an increased representation on the Insurance Committee [S. 59 (3)].

(8) The Treasury and the council of the county or county borough sanctioning any such expenditure as aforesaid shall thereupon each be liable to make good, in the case of the Treasury out of moneys provided by Parliament, and in the case of the council of a county or county borough out of the county fund or borough fund or borough rate, as the case may be, one half of any sums so sanctioned

by them and expended by the Insurance Committee on medical benefit in the course of the year in excess of the amounts so payable to the Insurance Committee as aforesaid. S. 15 (8)

See note to subs. (7) above.

Administration of sanatorium benefit.

16.—(1) For the purpose of administering sanatorium benefit, Insurance Committees shall make arrangements, to the satisfaction of the Insurance Commissioners,—

(*a*) with a view to providing treatment for insured persons suffering from tuberculosis or any other such disease as aforesaid in sanatoria and other institutions, with persons or local authorities (other than poor law authorities) having the management of sanatoria or other institutions approved by the Local Government Board, which treatment it shall be lawful for a local authority to provide as respects insured persons resident outside as well as respects those resident within their area; and

(*b*) with a view to providing treatment for such persons otherwise than in sanatoria or other institutions, with persons and local authorities (other than poor law authorities) undertaking such treatment in a manner approved by the Local Government Board, which treatment (including the appointment of officers for the purpose) it shall be lawful for a local authority, if so authorised by the Local Government Board, to undertake.

S. 16 (1) (b) — "**Sanatorium benefit**."—As to questions arising on sanatorium benefit and this section see notes to s. 8 (1) (d). Cf. the Prevention of Tuberculosis (Ireland) Act, 1908 (9 Edw. 7, c. 56).

"**Make arrangements**."—See s. 64 (2).

"**Sanatoria**."—See s. 63 (1).

"**Persons having the management**."—These words appear to include persons conducting an institution for private profit. Cf. s. 12 (1).

"**Persons resident outside their area**."—Cf. the Public Health Act, 1875, s. 131. There is nothing to confine Insurance Committees in their arrangements to local authorities within their area, so that, for instance, borough patients may be treated in a county sanatorium.

"**Otherwise than in sanatoria**."—As to local dispensaries see, as to Ireland, 8 Edw. 7, c. 56, s. 14. In England only Poor Law Authorities have power to maintain dispensaries (32 and 33 Vict. c. 63 and various Poor Law Orders).

(2) The sums available for defraying the expenses of sanatorium benefit in each year shall be—

(*a*) one shilling and threepence in respect of each insured person resident in the county or county borough, payable out of the funds out of which benefits are payable under this Part of this Act;

(*b*) one penny in respect of each such person payable out of moneys provided by Parliament:

Provided that the Insurance Commissioners may retain the whole or any part of the sums so payable out of moneys provided by Parliament to be applied, in accordance with regulations made by the Commissioners, for the purposes of research.

"**Funds out of which benefits are payable**."—See ss. 42 (c), 54 (1).

(3) An insured person shall not be entitled to sanatorium benefit unless the Insurance Committee recommends the case for such benefit.

(4) An Insurance Committee may, out of the sums

available for defraying the expenses of sanatorium treatment, defray in whole or in part the expenses of the conveyance of an insured person to or from any sanatorium or institution to which he may be sent for treatment therein, or may make advances for the purpose. S. 16 (4)

"**Recommended.**"—Presumably on medical advice given under the head of medical benefit. There is no provision enabling the Insurance Committee to pay otherwise for advice on the point.

17.—(1) The Insurance Committee for any county or county borough may, if it thinks fit, extend sanatorium benefit to the dependants of the insured persons resident in the county, or any part of the county, or in the county borough, or any class of such dependants, and in such case the arrangements to be made by the committee shall include arrangements for the treatment of such dependants, and the sums available for sanatorium benefit shall be applicable to the purpose. Power to extend sanatorium benefit to dependants.

"**If it thinks fit.**"—Its discretion is not fettered by the limit of sums available under s. 16 (2).

"**Extend sanatorium benefit to dependants.**"—This applies presumably only to dependants who would be entitled to sanatorium benefit if they were insured persons, *i.e.*, to those suffering from tuberculosis and the other diseases prescribed. It is clearly necessary in order to protect the insurance fund that all possible steps should be taken to expel the tubercle from the homes of insured persons. It is also of the greatest importance from the purely economic point of view to treat in the earliest possible stages those consumptives and tuberculous cripples who will, on attaining the age of 16, become deposit contributors, since deposit contributors as well as society members are entitled to sanatorium benefit in return for a contribution of 1*s.* 3*d.*; and that contribution being, with the cost of medical benefit, a first charge upon the funds standing to their credit [s. 42 (*e*)], practically every consumptive worker will be in a position to claim the benefit shortly after attaining the age of 16.

"**Dependants.**"—This word, as defined in the Workmen's Compensation Act, 1906, s. 13, includes: wife, husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister, whether the relationship is legitimate or il-

S. 17 (1) legitimate. It also includes a child *en ventre sa mère*. But it only applies to persons who actually were, or but for the accident incapacitating him would have been wholly or in part dependent upon his earnings at the time of his death. As to this see notes to s. 2 (1) (*b*) *infra*. This definition, however, is not here incorporated, and the Insurance Committee is given an extensive and powerful ascertaining the persons in fact dependent (s. 76); these persons apparently need not be relatives at all.

(2) If in any year the amount available for defraying the expenses of sanatorium benefit is insufficient to meet the estimated expenditure on sanatorium benefit for insured persons and such dependants, the Insurance Committee may, through the Insurance Commissioners, transmit to the Treasury and the council of the county or county borough an account showing the estimated expenditure for the purpose and the amount of the sums available for defraying the expenses of sanatorium benefit, and the Treasury and council may if they think fit sanction such expenditure.

For similar provisions relating to medical benefit, see s. 15 (2) *infra*, and notes, which are also applicable to this subsection.

"**May sanction.**"—If they do not sanction it the Committee will apparently be obliged to withdraw sanatorium benefit from the dependants. But if the funds provided under s. 17 (3) are still insufficient, the only remedy will be to exercise their powers under s. 16 (3), and recommend fewer insured persons for such treatment.

(3) The Treasury and the council of the county or county borough sanctioning such expenditure as aforesaid shall thereupon each be liable to make good, in the case of the Treasury out of moneys provided by Parliament, and in the case of the council of the county or county borough out of the county fund or borough fund or borough rate, as the case may be, one-half of any sums so sanctioned by them and expended by the Insurance Committee on sanatorium benefit for insured persons and their

dependants in the course of the year in excess of the amount available for defraying the expenses of the committee on sanatorium benefit. S. 17 (3)

Cf. s. 15 (8) *supra*, and notes.

Administration of maternity benefit.

18.—(1) Where the mother of the child is herself an insured person, and is not the wife or, in the case of a posthumous child, the widow of an insured person, maternity benefit shall be treated as a benefit for her and shall be administered in cash or otherwise by the approved society of which she is a member, or, if she is not a member of any society, by the Insurance Committee; in any other case the benefit shall be treated as a benefit for her husband and shall be administered in cash or otherwise by the approved society of which he is a member, or, if he is not a member of any such society, by the Insurance Committee, and shall be payable in respect of a posthumous child as if the husband were still alive:

Provided always that the mother shall decide whether she shall be attended by a duly qualified medical practitioner or by a duly certified midwife, and shall have free choice in the selection of such practitioner or midwife, but if, in the case of a midwife being selected, a duly qualified medical practitioner is subsequently summoned in pursuance of the rules made under the Midwives Act, 1902, the prescribed fee shall, subject to regulations made by the Insurance Commissioners, be recoverable as part of the maternity benefit.

As to maternity benefits generally, and questions arising under this section, see notes to s. 8 (1) (*c*) *supra* and see s. 8 (6), (8) (*d*).

"**Mother of the child.**"—These words seem to exclude from maternity benefit cases of early abortion where there is no child, but no real line of demarcation can be drawn.

S. 18 (1) "In cash or otherwise."—As provided, for instance, by s. 12 (2), proviso (ii), whereby, in certain cases the benefit may be applied to secure treatment in a hospital. The society may also send, at their expense, a midwife, as is done by Mothers' Aid Societies now existing, but subject to the mother's free choice of her attendant.

"Herself an insured person."—She may be insured (a) if she is employed, whether married or not, (b) if unmarried, as an "ordinary voluntary contributor", but if she marries, and is not thereafter employed, she cannot get maternity benefit [s. 44 (1)], unless her husband is insured, although she may become a voluntary contributor at 3d. a week [s. 44 (2)].

"Treated as benefit for her . . . treated as benefit for her husband."—It is submitted that the effect of this is that the benefit depends upon the position as to arrears, etc., of the person in each case mentioned. It would seem to follow that where the benefit is for the husband he alone can claim it [see note to s. 8 (1)(a), (4) *infra*]. From a financial point of view, if the husband, or if both parties, are members of "approved societies," it will apparently make very little difference whether the benefit is treated as her's or his; in either case the husband's right to other benefits will remain untouched. But, where either, or both are "deposit contributors" (see s. 42 *infra*), it will make a considerable difference.

"Shall be payable in respect of a posthumous child."—In such a case the right of claim must clearly be in the wife, but it is submitted that in other cases, the above note is nevertheless probably correct.

"Free choice of . . . practitioner or midwife."—In some towns 70 per cent. of the confinements are attended by midwives, and since the Midwives Act of 1902 came into full operation the proportion has increased. Certain Municipal Corporations such as Manchester and Liverpool, and some Boards of Guardians pay fees to medical practitioners summoned to the assistance of midwives under the Midwives Act in the case of poor persons who are not paupers, and this acts as an inducement to women to choose midwives.

"The prescribed fee."—Prescribed by the Insurance Commissioners under s. 65. See, however, the Rules of the Central Midwifery Board, 1903.

(2) In deciding whether or not they shall make an order under the Bastardy Laws Amendment Act, 1872, for the payment of the expenses incidental to the birth of a child, the justices shall not take into consideration the fact that the mother of the child is entitled to receive maternity benefit under this Part of this Act.

Punishment of husband

19. Without prejudice to any other legal liability, where under the immediately foregoing section,

which relates to the administration of maternity benefit, of this Act, maternity benefit is given or paid to the husband, it shall be the duty of the husband to make adequate provision to the best of his power for the maintenance and care of his wife during her confinement, and for a period of four weeks after her delivery, and if he neglects or refuses to do so he shall be liable upon summary conviction to imprisonment, with or without hard labour, for any term not exceeding one month.

S. 19 — in certain cases of neglect.

"**Other legal liability.**"—As to the common law liability of a person who is in fact in charge of, or bound to maintain, an invalid, see *R.* v. *Friend*, R. &. R. 20, and *R.* v. *Bubb and Hook*, 4 Cox, C. C. 454. See also the Vagrancy Act, 1824 (5 G. 4, c. 83, s. 3).

"**Imprisonment.**"—A fine may, however, be inflicted. (Summary Jurisdiction Act, 39 and 40 Vict. c. 45, s. 19).

"**Summary conviction.**"—There is no provision in the Act enabling the wife to give evidence against her husband, and at common law she is not a competent witness for the purpose (2 Hawk. c. 46, 55, 70, 77, *R.* v. *Griggs*, Sir T. Raym. 1, *R.* v. *Jagger*, 1 East P.C. 455). Nor is this a case within the Criminal Evidence Act, 1898. It appears, therefore, that the wife cannot be called as a witness for the prosecution of this offence.

20. For the purpose of the administration of maternity benefit the Insurance Commissioners may, if they think fit, by special order provide for the reinsurance with them of the liabilities of all approved societies in respect of maternity benefit, and the order may provide for the method of calculating the premiums to be charged against the several societies in respect of such reinsurances and may contain such other incidental, consequential, and supplemental provisions as may appear necessary for the purpose.

Reinsurance for the purposes of maternity benefit.

The intention of the section is apparently to insure a flat rate of expenditure by all societies for the purpose of maternity benefit so as to avoid penalising any society on account of the fecundity of its members. Such a special order would further extend the bachelors' and spinsters' tax, which the Act in fact imposes.

"**Special Order.**"—Under s. 113, and Appendix I. 14 (*b*).

S. 21

Power to subscribe to hospitals, &c.

21. It shall be lawful for an approved society or Insurance Committee to grant such subscriptions or donations as it may think fit to hospitals, dispensaries, and other charitable institutions, or for the support of district nurses, and to appoint nurses for the purpose of visiting and nursing insured persons, and any sums so expended shall be treated as expenditure on such benefits under this Part of this Act as may be prescribed.

See Chap. IV *supra* as to the effect of this provision on voluntary hospitals.

"**Lawful**"—But not obligatory; it may again be noticed that there is no provision for the society to obtain any voice in the control of such institutions in return for such subscriptions or donations.

"**Other charitable institutions**"—This is a wide term, but probably it means *ejusdem generis* with hospitals, or at all events institutions carrying on work of the kind dealt with by this Act.

"**Appoint nurses**."—See s. 13 (2), especially (c).

Power of councils of boroughs and districts to contribute to certain expenditure on medical and sanatorium benefits.

22.—(1) The council of any borough or urban or rural district may agree with the council of the county in which the borough or district is situate to repay to the latter council the whole or any part of the sums payable by that council in accordance with the provisions of this Part of this Act towards the excess expenditure on medical or sanatorium benefit so far as such excess is properly attributable to the borough or district, and any sums payable by the council of the borough or district in pursuance of such an agreement shall be payable, in the case of a borough, out of the borough fund or borough rate, and, in any other case, as part of the general expenses incurred by the council in the execution of the Public Health Acts.

"**Borough**," *i.e.*, "municipal borough, any place for the time being subject to the Municipal Corporations Act, 1882" [Interpretation Act, 1889, s. 15 (1), (4)], not including a metropolitan borough [London Government Act, 1899, ss. 1 and 31 (1)].

"**The Provisions**."—Ss. 15 (7), (8), and 17 (2) (3) *supra*.

(2) The agreement may provide that the county council shall not raise any sum on account of any expenditure incurred by them under this Part of this Act for the purpose to which the agreement relates within the borough or urban or rural district the council of which has entered into such agreement, during the continuance of such agreement. S. 22 (2)

In this case the expenditure in the remainder of the county will be charged to the "special county account," so as to be levied only upon the parts of the county which have not made any such agreement (see the Local Government Act, 1888, s. 68).

Approved Societies.

23.—(1) Any society, that is to say, any body of persons, corporate or unincorporate (not being a branch of another such body), registered or established under any Act of Parliament, or by Royal Charter, or if not so registered or established, having a constitution of such a character as may be prescribed, which complies with the requirements of this Act relating to approved societies, may be approved by the Insurance Commissioners, and, if so approved, shall be an approved society for the purposes of this Part of this Act: Conditions for the approval of approved societies.

"Not being a branch."—See ss. 27, 40, and 79 *infra*. "The expression 'branch' in relation to a society shall not include any branch of the society which is not itself separately registered" (s. 79).

"Branch" is thus defined in the Friendly Societies Act, 1896, s. 106: "any number of the members of a society, under the control of a central body, having a separate fund, administered by themselves, or by a committee or officers appointed by themselves, and bound to contribute to a fund under the control of a central body."

Branches which do not comply with this definition have to be registered as separate societies [s. 17 (2) of that Act]. The definition in s. 79 does not mean that a "branch" within the meaning of this Act must be registered as a separate society, but that it must be registered in accordance with s. 19 of the F.S.A., 1896, and not in one registration with the central body under s. 17 (1) of that Act, societies so registered being treated as having no branches under this Act.

There are no provisions in the other Acts mentioned in the next note dealing with the constitution of branches.

S. 23 (1) "**Registered or established under any Act of Parliament.**"—The Acts referred to, in addition to special and private acts, apparently include:

The Friendly Societies Act, 1896 (ss. 8–22 and 71).
The Companies Act, 1908 (ss. 1–21).
The Companies Clauses Act, 1845.
The Trade Union Acts, 1871 (ss. 6, 13, 14) and 1876 (s. 6).
The Industrial and Provident Societies Act, 1893 (ss. 3–19).
The Building Societies Act, 1874 (ss. 9, 12, 17).
The Assurance Companies Act, 1909 [s. 30 (4)].
See also: the Shop Clubs Act, 1902 (s. 2).
The Licensing Act, 1902 (ss. 24, 25).
The Collecting Societies and Industrial Assurance Companies Act, 1896.

For the power of societies to register under the F.S.A., 1896, for the purposes of this Act see s. 75; and for the application of the above statutes to the business under this Act of societies registered under them see s. 76 *infra*.

"**Or if not so registered.**"—Such societies are at present subject to a limited statutory regulation. If they exist "for the purpose of carrying on any business that has for its object the acquisition of gain by the company (society), or by the individual members thereof," they are made illegal by the Companies Act, 1908 [s. 1 (2)].

Thus a loan society (*Jenning* v. *Hammond*, 9 Q.B.D. 225; *Shaw* v. *Benton*, 11 Q.B.D. 563); and a medical marine association (*re Arthur Average Association*, L.R. 10 Ch. 545 n.; *re Patiston Total Loss and Collision Assurance Association*, 20 Ch.D. 137; *re London Marine Association*, L.R. 8 Eq. 176, 195) are, if unregistered, illegal and unable to maintain actions. But whether an unregistered friendly society would come under that section is doubtful (see *re One and All, &c., Association*, 25 T.L.R. 674). But even if illegal such a society is not criminal and its members are entitled to sue defaulting officials for money converted to their own use (*Marrs* v. *Thompson*, 86 L.T.N.S. 759), and to prosecute them under the Larceny Act, 1868 s. 1 (*R.* v. *Skinner*, L.R. 1 C.C.R. 236; *R.* v. *Tankard*, 1894, 1 Q.B. 548), although such a society is probably not a "partnership" (*Oldham Our Lady's Sick and Burial Society* v. *Taylor*, 3 T.L.R. 472). Such members can also restrain by injunction the application of the funds otherwise than according to the rules (*Wolfe* v. *Matthews*, 21 Ch.D. 194, and cf. *A.S.R.S.* v. *Osborne*, 1910, A.C. 87). As to the general position of unregistered friendly societies see further: *Knowles* v. *Booth* (32 W.R. 432); *Swaine* v. *Wilson* (24 Q.B.D. 252); *Duke* v. *Littleboy* (49 L.J.Ch. 802); *Hornby* v. *Close* (L.R. 2 Q.B. 153); *Farrer* v. *Close* (L.R. 4 Q.B. 602).

Such societies, if they contain members serving in the territorial army, naval volunteers, &c., are subject to the F.S.A., 1896, s. 43 (1), (2); and if they provide payments on the death of children under five years of age, to ss. 62–67. If they are collecting societies, *i.e.*, friendly societies or branches, or persons or bodies granting life assurances of less than £20, who receive contributions or premiums by means of collectors at a greater distance than ten miles from their registered office or principal place of business, and in the case of industrial assurance companies, at less periodical intervals than two months, they are subject to the Collecting Societies, &c., Act, 1896.

If they carry on assurance business (life, fire, accident, employers' liability, and bond investment), within the meaning of s. 1 of the Assurance Companies Act, 1909, they are subject to the provisions of that Act unless they can obtain exemption from the Board of Trade under s. 35. S. 23 (1) —

See Appendix I. 8 (1) (*a*), (2) and (3).

Provided that, where any society establishes for the purposes of this Part of this Act a separate section consisting of insured persons, whether with or without honorary members not being insured persons, and so constituted as to comply with the requirements of this Act relating to approved societies, such separate section may be approved by the Insurance Commissioners, and, if so approved, shall be an approved society, and the provisions of this Part of this Act relating to the conditions of approval of societies and to approved societies shall apply only to such separate section of the society.

"**A separate section.**"—There is no restriction upon the objects for which the parent society may have been established; it is not even necessary that the relief of sickness should be one of them. For instance, a trading or railway company might, if it chose, establish such a separate section and claim to be "approved." The "separate section" need not be registered, but if it is, it can only be under the F.S.A., 1896, though it may also be subject to the provisions of some of the other Acts referred to *supra*.

"**Insured persons.**"—*i.e.*, within the meaning of s. 1 *supra*. The "separate section" probably cannot contain members insured for benefits independently of this Act unless they are also insured under the Act: see the next note and subs. (2) (ii) and (iii) *infra*.

"**Honorary members.**"—The existence of such members is contemplated by the F.S.A., 1896, s. 78 (1) (*c*), which provides that their signatures to an instrument of dissolution shall count towards the requisite majority; although they (in common with other members) have no claim upon the surplus funds after dissolution (*Braithwaite* v. *A. G.*, 1909, 1 Ch. 510). But there is no definition of them in that or this Act. The rules of Friendly Societies usually provide that "honorary members" shall have the privilege of subscribing to the funds but not those of voting, taking part in management, or receiving benefits (*e.g.*, the Ancient Order of Foresters, General Law 39; the Independent Order of Oddfellows, Manchester Unity, General Rule 56). Apparently the intention here is that "honorary members" shall be distinct from the "members not being insured persons" mentioned in subs. (2) (ii), for by subs. (2) (iii) they may not vote, though it is not said that they are ineligible for the committee of management.

S. 23 (1) "**The provisions . . . shall apply only to such separate section.**"—The parent society may, *e.g.*, be carried on for profit contrary to subs. (2) (i), or not managed in accordance with subs. (2) (ii).

(2) No society shall receive the approval of the Insurance Commissioners unless it satisfies the following conditions :—

(i) It must not be a society carried on for profit ;

I.e., for the pecuniary advantage of the society as such, or of any shareholders or other persons apart from that of persons insured under or apart from this Act. See, however, the last note to subs. (1). This does not, of course, prevent officials and servants of the society from receiving remuneration.

(ii) Its constitution must provide to the satisfaction of the Insurance Commissioners for its affairs being subject to the absolute control of its members being insured persons or, if the rules of the society so provide, of its members whether insured persons or not, including provision for the election and removal of the committee of management or other governing body of the society, in the case of a society whose affairs are managed by delegates elected by members, by such delegates, and, in other cases, in such manner as will secure absolute control by its members ;

"**Absolute control.**"—Subject of course to the statutory control provided by the various Acts under which the societies may be registered, and by this Act.

"**Insured persons.**"—Within s. 1 *supra*.

"**Whether insured persons or not.**"—See note as to "honorary members," subs. (1) *supra*. Apparently the persons here contemplated are persons insured independently of this Act.

"**The election . . . governing body of the society.**"—This provision applies only to the central governing body of a society with branches, because a branch cannot by itself become "approved" [see subs. (1) *supra* and cf. s. 27 (1) (*a*) and notes *infra*]. The F.S.A., 1896, lays down by s. 9 (3) and its First Schedule (4) that the rules shall provide for "The appointment and removal of a committee of

management (by whatever name), . . . and in the case of a society with branches, the composition and powers of the central body, . . ." but it does not require this to be done by any particular method. In the case of a Collecting Society, a collector cannot be a member of the committee [C.S.A., 1896, ss. 8 (*a*) and 14 (1) (*a*)]. A minor can in no case be such a member [F.S.A., 1896, s. 36 (2) and s. 74 *infra*]. S. 23 (2) (ii) —

"**Delegates elected by members.**"—This provision was inserted to meet the case of a number of Collecting Societies and of the Hearts of Oak Benefit Society, Rule 38 of which lays down that every annual or special meeting of the society shall be constituted of a Board of Delegates, each of whom shall be elected to represent a district of approximately 1,000 members, by those members, by means of voting papers sent out by and returned to the secretary of the society by post. This Board elects the executive council and officers. The existence of such an arrangement is contemplated by the F.S.A., 1896, s. 106 (definition of "meeting").

(iii) If the society has honorary members, its constitution must provide for excluding such honorary members from the right of voting in their capacity of members of the society on all questions and matters arising under this Part of this Act.

This does not mean that honorary members are to take no part in the management of the society's business under this Act; they are not rendered ineligible as committee-men, and in that capacity may of course vote on questions which that body can decide. But they must not vote in the election of the committee or delegates, nor on any questions which have to be submitted to the society (or separate section) as a whole.

(3) Applications for approval under this section may be made and approval granted at any time before or after the commencement of this Act, and the Insurance Commissioners may grant approval either unconditionally or subject to the condition of the society taking within such time as the Commissioners may allow such steps as may be necessary to make the society comply with the requirements of this Part of this Act relating to approved societies.

"**The commencement of this Act.**"—See s. 115 *infra*.

"**The requirements.**"—Including such requirements as the Commissioners are themselves empowered to make, by regulation or otherwise.

S. 23 (3) A society which is conditionally approved may embark upon the transaction of business as soon as the Act comes into force.

As to the consequences of approval being withdrawn, see s. 29 *infra*.

Power of societies to undertake insurance business under Part I.

24.—(1) It shall be lawful for any body of persons, corporate or unincorporate, established before the passing of this Act which is desirous of transacting insurance business under this Part of this Act, or of making any amendments in its constitution, or administration, or contributions, or benefits, or otherwise which may be necessary or expedient in consequence of the passing of this Act notwithstanding anything in the provisions of the Acts under which it is established or registered or carried on, or of its memorandum or articles of association, rules, or other instruments governing its constitution or defining its objects, to do all such acts and things (including the establishment of a separate section as aforesaid) as may be necessary for the purpose of enabling the body to undertake the transaction of such business as soon as may be after the passing of this Act and, if the instrument regulating the constitution of the body contains provisions requiring any interval to elapse before action can be taken, such provisions shall not apply to action taken for the purposes aforesaid.

"**Contributions or benefits.**"—See especially s. 72 *infra*.

"**Rules.**"—It will be necessary for registered societies to register new rules defining the constitution of the society (or separate section) for the purposes of such business, but the society will be able to proceed to business without waiting for the new rules to be registered. See s. 27 (3) *infra*.

"**Separate section.**"—S. 23 (1) *supra*.

(2) Subsections (3) and (4) of section seventy of the Friendly Societies Act, 1896, shall not apply to any resolutions for amalgamation or transfer of

engagements when the resolution is made expressly for the purposes of this Part of this Act. S. 24 (2)

Those subss. prohibit such amalgamation or transfer except with the assent of five-sixths of the members, and the written consent of every member entitled to present benefits whose claim is not first satisfied, unless the Chief Registrar, after hearing all parties interested, orders that such consents may be dispensed with. The rest of s. 70 and s. 74 of the Friendly Societies Act, 1896, continue however to apply, subject to subs. (1) *supra*.

(3) This section shall come into operation on the passing of this Act, and shall not continue in force beyond the expiration of one year from the commencement of this Act, except so far as may be necessary to enable a society which has undertaken the transaction of insurance business under this Part of this Act to continue to transact such business.

"**The commencement.**"—See s. 115 *infra*.

"**Except so far as may be necessary**," *i.e.*, any changes made within the year will remain valid, but no changes after that date will be validated by this section.

Special provisions for employers' provident funds, etc.

25.—(1) Where a society consists of persons entitled to rights in a superannuation or other provident fund established for the benefit of persons employed by one or more employers, the society may be approved, notwithstanding that the employer is entitled to representation on the committee or other body administering the fund to an extent not exceeding one quarter of the total number of the body, if the employer, in addition to the employer's contributions payable by him under this Part of this Act, is responsible for the solvency of the fund or for the benefits payable thereout, or is liable to pay a substantial part of, or to make substantial contributions to, or substantially to supplement, the benefits payable out of the fund :

S. 25 (1) "**Nothwithstanding . . . administering the fund.**"—This would otherwise be inconsistent with s. 23 (2) (c) *supra*.

"**The employers contributions.**"—See s. 4 (1) and the Second Schedule *supra*.

"**Responsible for the solvency.**"—*i.e.*, liable to make good any deficit on each valuation [ss. 36, 38 and 39 (7) *infra*] or to the benefits as they become due. Unless the trade is an unusually unhealthy one [see s. 63, especially (2) (a), *infra*], or the fund is mismanaged, this should not entail any expense for the employer.

"**A substantial part.**"—Not of the benefits under this Act, but extra benefits.

Provided that no such society as aforesaid shall be approved unless by its constitution it is prohibited so far as concerns the benefits under this Part of this Act from refusing to allow a member to transfer to another approved society, and from refusing to allow a member who is discharged from or leaves the employment of the employer and is unable to obtain admission to another approved society on account of the state of his health to continue a member, and unless its constitution provides for the election of the members of the committee of management (other than the employer's representatives) by ballot:

"**Transfer.**"—See ss. 31, 32 *infra*. Apparently a member may be refused permission to transfer to the Post Office fund [s. 43 (1) (a) *infra*].

"**To continue a member.**"—Cf similar provisions as to seamen, marines and soldiers in s. 46 (3) (*b*), and as to the mercantile marine in s. 48 (8) *infra*; *cf.* also the Shop Clubs Act, 1902, s. 6.

Provided also that no such society shall be approved if the employer makes membership of such society a condition of employment.

"**A condition of employment.**"—Whether it is so made at the time of engagement or afterwards (*Baldwin* v. *Lord Ebury*, 20 T.L.R. 60). "Shop Clubs" where membership is made compulsory, unless in connection with railway companies, must be certified under the Shop Clubs Act, 1902, as well as registered under the F.S.A., 1896. No such clubs will be able to become approved unless the condition of compulsory membership is withdrawn.

Quære, whether under the former Act it is an offence for employers to impose, as a condition of employment, membership of a society which does not consist solely of their employees; it would be in the discretion of the Insurance Commissioners to refuse approval to such a society. S. 25 (1)

(2) Where, for the purpose of enabling any such society to become an approved society, it is necessary to make any alteration in the existing rules or constitution of the society which it is not competent for the society under its existing constitution to make, a scheme for the purpose may be submitted for the approval of the Insurance Commissioners.

Cf. s. 24 *supra* and s. 73 *infra*, and Appendix I. 8 (1) (*b*).

(3) Where such a scheme has been approved by the Insurance Commissioners, the Act or deed constituting the society shall have effect subject to the provisions of the scheme, but the Insurance Commissioners shall not approve any such scheme unless they are satisfied that the members of the society have been given an opportunity of voting by ballot thereon, and that the scheme makes proper provision for safeguarding existing rights and interests.

"**Voting by Ballot.**"—Nothing is said as to the result of the ballot; presumably, therefore, a bare majority will be sufficient.

"**Existing rights and interests.**"—See s. 73 *infra*.

Security to be given by approved societies.

26.—(1) Every approved society and every society desirous of becoming an approved society shall give such security as the Insurance Commissioners may consider sufficient to provide against any malversation or misappropriation by officers of the society of any funds coming to the hands of the society under this Part of this Act, and in determining the amount of the security to be required the Commissioners shall have regard to the amount of the funds

S. 26 (1) so coming into the hands of the society: Provided that no security shall be required from any society which proves to the Insurance Commissioners that the only funds coming into the hands of the society under this Part of this Act are such funds as are required for reimbursing to the society sums previously expended by the society under this Part of this Act.

See Appendix I, § 1 (1) (c).

"**Such security . . . sufficient**."—By Special Authority No. 6 issued by the Treasury in pursuance of s. 8 (5) of the F.S.A., 1896, societies may be registered for guaranteeing the fidelity of officers of societies generally, and by the F.S.A., 1908, s. 1, the guarantee of fidelity of its own officers is included as an object of a society.

"**Any funds coming to the hands of the Society**."—See s. 50 *infra*. As to the security which the officers themselves might be required to give to the society see the Friendly Societies Act, 1896, s. 54, and the Industrial and Provident Societies Act, 1893, s. 4.

(2) In the case of an approved society with branches having insured persons among their members, security shall be given in respect of each such branch by the society.

(3) The Insurance Commissioners may from time to time vary the amount of security to be given or maintained by an approved society as may be thought proper, and, where security is given by way of deposit of securities, the society which made the deposit may, with the consent of the Insurance Commissioners, substitute other securities for the securities for the time being deposited.

(4) Any dividends or interest arising from securities deposited by an approved society under this section shall be paid to the society.

Provisions as to approved societies.

27.—(1) Every approved society shall, as respects the administration of the affairs of the society under this Part of this Act, make proper provision by rules to the satisfaction of the Insurance Commissioners

for the government of the society, and if a society with branches— S. 27 (1)

(*a*) for the government of the society and its branches;

"**To the satisfaction of the Insurance Commissioners.**"—And in conformity with s. 23 (2) *supra*. See Appendix I. 8 (1) (*d*).

"**Branches.**"—For definition see note to s. 23 (1) *supra*, and for further provisions as to branches see ss. 35–38 and 40 *infra*.

Societies registered under the Friendly Societies Act, 1896, are already required by s. 9 (3) and the First Schedule of that Act to make provision by their rules for:—

"3. The mode of holding meetings and right of voting, and the manner of making, altering or rescinding rules.

"4. The appointment and removal of a committee of management (by whatever name), of a treasurer and other officers, and of trustees, and in the case of a society with branches, the composition and powers of the central body, and the conditions under which a branch may secede from the society.

"8. The manner in which disputes shall be settled."

On the last point see also s. 68 of that Act.

(*b*) for the determination of disputes arising between the society and any branch thereof, or between one such branch and another;

See s. 67 and notes *infra*, where it is also provided that disputes between a society or branch and an insured person who is or has ceased to be a member, and any person claiming through him, shall be settled in accordance with the society's rules.

(*c*) for the administration of benefits by the branches as respects insured persons who are members of such branches;

"**Administration of benefits.**"—As to detailed rules for this purpose see s. 14 (2) *supra*.

(*d*) for the keeping of proper books of account by the branches in any case where separate accounts are usually kept by those branches;

For the present requirements as to accounts see the First Schedule to the Friendly Societies Act (5) and (10); see also s. 35 (1) (*a*) *infra*.

S. 27 (1) (e) (e) for depriving of or suspending from the right of administering benefits under this Part of this Act any branch which is guilty of maladministration of those benefits, or is convicted of any offence under any Act, and for providing in such a case for their administration by the society or otherwise.

"**Maladministration.**"—See s. 58 (1) (e), (e) and (f) *infra*.

"**Convicted of any offence.**"—See the Friendly Societies Act, 1896, ss. 84 (1), (b), (c), (f), 86, 89, 91, as respects offences by branches, under that Act, and as respects offences under this Act, see ss. 29 and 69 *infra*, and note that "person" includes such a branch (Interpretation Act, 1889, s. 19).

(2) Every approved society and every branch thereof shall comply with any regulations made by the Insurance Commissioners as to the place in which meetings are to be held, and those regulations may provide for the use for such meetings, with or without payment, of any offices or other buildings under the control of a Government department (including offices or buildings occupied by or in connexion with a labour exchange) or belonging to or under the management of a local authority, but subject to the consent of the Government department or the local authority concerned.

"**Offices . . . a local authority.**"—Cf. s. 59 (4) *infra* and note.

(3) Where under any Act regulating the constitution of an approved society the rules of the society are required to be registered, any rules approved under this section by the Insurance Commissioners shall forthwith be registered, but until so registered shall have effect as if they had been duly registered.

Cf. ss. 14 (5), 23 (1), 24 (1), and 25 (2) *supra*.

S. 28 (1)

Secessions, etc.

28.—(1) No branch of an approved society having insured persons among its members shall be entitled to secede or withdraw from the society without the consent of the Insurance Commissioners; but such consent shall not be given unless the seceding or withdrawing branch complies with the conditions of approval requisite in the case of approved societies, and, on any such consent being given, the branch shall be subject in all respects to the provisions and requirements of this Part of this Act relating to approved societies:

Provided that such consent shall not be required if the branch makes provision to the satisfaction of the Insurance Commissioners for the transfer to other approved societies or to other branches of the society from which it is seceding or withdrawing of such of its members as are insured persons.

"**Secede.**"—This is one of the matters for which a society registered under the Friendly Societies Act, 1896, must provide by rule [see note to s. 27 (1) (*b*) *supra*]; unless the secession is in accordance with the rules the branch cannot be registered as a separate society (s. 20 of that Act). Now the consent of the Commissioners is made a further condition. But a branch which does not comply with s. 20 of that Act might nevertheless be approved as an unregistered society under s. 23 (1) *supra*. But neither in that Act nor in this does there appear to be special provision for the case of a branch seceding from one society and joining another, though s. 73 of that Act provides for one registered society becoming a branch of another; it seems that under this Act a branch of one society could only join another by first becoming approved as an independent society.

"**Complies with the conditions of approval.**"—See s. 23 *supra*, and Appendix I. 8 (1) (*e*).

"**Transfer.**"—See s. 31 *infra*.

(2) An approved society or a branch thereof shall not be dissolved without the sanction of the Insurance Commissioners, and any such dissolution, so far as it affects members who are insured persons, shall be carried out in the prescribed manner.

S. 28 (2)

The dissolution of societies is at present regulated as follows:—
The Friendly Societies Act, 1896, subs. 78–83.
The Collecting Societies Act, 1896, s. 12.
Where the approved society is a separate section [s. 23 (1) *supra*] this provision applies only to that section, and the Commissioners will have no control over the dissolution of the parent society, except in so far as it involves that of the separate section.

(3) No branch of an approved society shall be expelled from the society, unless proper provision is made to the satisfaction of the Insurance Commissioners with respect to any members of the branch who are insured persons.

The expulsion of branches is at present regulated by the same provisions as their secession. See note to subs. (1) *supra*.

(4) This section shall have effect notwithstanding anything contained in any Act regulating the constitution of the society.

"**Any Act.**"—See notes to s. 23 (1) and the previous notes to this section. The effect is not to dispense with any of the requirements of the sections there cited, but to superadd those of this section.

Withdrawal of approval.

29.—Where an approved society or a branch of any approved society fails to comply with any of the provisions or requirements of this Part of this Act relating to approved societies, or where such a society or branch or the body of which the society forms a separate section is convicted of any offence under any Act regulating its constitution or under any other Act, the Insurance Commissioners may withdraw their approval, and thereupon the society shall cease to be an approved society and the Insurance Commissioners shall make such provision as they may consider necessary with respect to members of the society who are insured persons.

"**Any offence under any Act.**"—See note to s. 27 (1) (*e*) *supra*, and in addition:—
The Industrial and Provident Societies Act, 1893, s. 62.

The Collecting Societies Act, 1896, s. 14.
The Assurance Companies Act, 1909, s. 23.
The Companies Act, 1908, s. 276, &c.
The Trade Union Acts, 1871, ss. 9, 16, 19, 20, and 1876, ss. 2, 15.
The Licensing Act, 1902, s. 28, &c., &c.

"**Any other Act.**"—This includes any statutory offence whatever, but apparently not common law offences.

See Appendix I. 8 (1) (*a*).

Membership of Approved Societies and Transfer of Members.

Admission of insured persons to membership in approved societies.

30.—(1) Subject to the provisions of this Act, any insured person and any person entitled to become an insured person may apply to an approved society for membership therein.

"**Any insured person.**"—See s. 1.

"**Entitled to become.**"—In view of subs. (3) this apparently means a person who, being of opinion that he will become an insured person at the commencement of this Act (s. 115 *infra*) wishes to apply for membership before that date, but strictly a person cannot until then be entitled to become insured.

(2) An approved society shall be entitled, in accordance with its rules, to admit or reject any such applicant, or to expel any of its members being insured persons: Provided that no such application shall be refused solely on the ground of the age of the applicant.

"**Admit or reject.**"—The terms on which this may be done are required by the various Acts, under which societies may be registered, to be defined in the rules, but are not otherwise prescribed.

"**Expulsion.**"—May also be regulated by the rules, and may validly be imposed as a consequence of non-payment of subscriptions (*Catt v. Wood*, 102, L.T.N.S. 614). See however s. 79 *infra*, and cf. s. 10 (1). But it is doubtful whether those sections deprive a society of the right to expel members who are in arrears. Disputes arising out of it are at present settled in accordance with the Friendly Societies Act, 1890, s. 68, or the Collecting Societies Act, 1896, s. 7; see, however, s. 67 *infra*.

"**The age of the applicant.**"—This is a common ground of rejection; see Model Rules for Friendly Societies, issued by the Central Registry Office, Rules 7 and 8. Sex, occupation, and residence are also grounds of exclusion suggested in the Model Rules, and apparently may continue to be adopted in "approved societies."

S. 30 (2) — A purely voluntary society, of course, cannot afford to accept members past middle age, but under the Act the loss due to this is compensated by a "reserve value" (s. 55). Minors of any age may (subject to rules) be members of Friendly Societies (Act of 1896, s. 2), but persons under 16 cannot be members of Industrial and Provident Societies (Act of 1893, s. 32), or insured under this Act, s. 1 (1).

"**Solely.**"—Apparently age coupled with some other ground would be permitted, even if age were the real determining factor.

(3) This section shall come into operation on the passing of this Act.

See note to subs. (1) *supra*.

Transfer from one approved society to another.

31.—(1) If an insured person, being a member of an approved society, ceases to be a member of that society, whether voluntarily or by expulsion, and becomes a member of another approved society, there shall be transferred to such other society in respect of such person a sum representing the liability under this Part of this Act of the first-mentioned society in respect of him (in this Act called "transfer value") calculated in accordance with tables to be prepared by the Insurance Commissioners:

Provided that such transfer value shall not be so transferred in any case where the first-mentioned society proves that the insured person voluntarily ceased to be a member of that society without the consent of the society, and that that consent was not unreasonably withheld.

"**Ceases . . . voluntarily.**"—Except where a whole branch seceded [as to which see s. 28 (1) *supra*] voluntary withdrawal is not regulated by the Friendly Societies Act, 1896, but it is one of the matters required to be dealt with by the rules of a society under the Industrial and Provident Societies Act, 1893 (Second Schedule, 9).

"**By expulsion.**"—As to branches, see s. 28 (3), and as to individuals, s. 30 (3) *supra*.

"**Becomes a member of another approved society.**"—For a similar provision with regard to such a man who becomes a "deposit contributor," see s. 43 (1) (*a*) *infra*.

"**Transfer value.**"—At the moment of entry into insurance (within twelve months of the commencement of the Act), this is the same as "reserve value" [see s. 55 (1) *infra*], but, whereas the latter is constant the former varies as time goes on. As to transfer values where the transfer is from England, Scotland, Ireland, or Wales to another of those countries see note to s. 83 (3) *infra*, and Appendix I. 13 (*d*). S. 31 (1)

(2) This section shall apply to transfers from one branch of an approved society to another branch of the same or any society in like manner as it applies to transfers from one society to another society.

Transfers to foreign and colonial societies.

32.—(1) If an insured person ceases to be permanently resident in the United Kingdom and becomes a member of any society or institution established in a British possession or foreign country, of a kind similar to an approved society, which is approved by the Insurance Commissioners, or of any branch established outside the United Kingdom of an approved society, the transfer value of such person, or, in the case of a deposit contributor, the amount standing to his credit in the Post Office fund, shall be paid to such society or institution or branch; but no such payment shall be made, unless the Insurance Commissioners are satisfied that the society, institution, or branch in question gives corresponding rights to any of its members becoming resident in the United Kingdom.

See Appendix I. 15 (*a*).

"**Ceases to be permanently resident in the United Kingdom.**"—Cf. the first Schedule, Part I. (*b*) under s. 1 (2) and s. 8 (4) *supra* and notes. In spite of the ambiguity of language this must mean "becomes permanently resident elsewhere."

"**British possession.**"—"Any part of H.M. dominions exclusive of the United Kingdom" (Interpretation Act, 1889, s. 18), and therefore inclusive of the Channel Islands and the Isle of Man. [See s. 8 (4) proviso].

"**Branch established outside the United Kingdom.**"—The Friendly Societies Act, 1896, extends to the Isle of Man and the Channel Islands; the Industrial and Provident Societies Act, 1893,

S. 32 (1) only to the latter Islands, and branches established outside the British Islands are not regulated by those Acts. The Trade Union and Companies Acts do not extend beyond the United Kingdom.

"**Transfer value.**"—S. 31 *supra*.

"**Deposit contributor . . . Post Office fund.**"—Ss. 42-3 *infra*, but note that the provisions of s. 43 (2) apparently do not apply to this case.

"**Shall be paid.**"—*i.e.*, in cash, not merely credited, as in the case of a society in the United Kingdom.

"**Gives corresponding rights.**"—There are existing arrangements in force in some of the affiliated orders for transfer value of members going from one lodge to another, including those in British possessions and the U.S.A.; see, *e.g.*, Rule 92 (*b*) of the Manchester Unity of Oddfellows.

(2) Where an arrangement has been made with the Government of any British possession or with the Government of any foreign State, whereby insured persons may be transferred to a society or institution established in the British possession or foreign State similar to an approved society or the Post Office fund, and members of any such society or institution may be transferred to approved societies or to the Post Office fund, it shall be lawful for the Insurance Commissioners to make such arrangements as may be necessary for any such transfer as aforesaid, and for the determination of the amount to be transferred in any such case, and of the rights to which any person transferred is to be entitled; so, however, that nothing in this section shall affect the rights of a society under this Part of this Act to refuse applications for membership.

"**The rights . . . to refuse membership.**"—See s. 30 (2) *supra*. See also Appendix I. 15 (*b*).

Transfer values of emigrants who re-

33. If a person who has for not less than five years been a member of an approved society for the purposes of this Part of this Act has ceased

permanently to reside in the United Kingdom, and does not join such a society, branch, or institution as is in the last foregoing section mentioned, and the approved society is willing to permit him to remain a member of the society and to become entitled to benefits independently of this Act, the society may, subject to regulations by the Insurance Commissioners, transfer from the account of the society under this Part of this Act to the credit of the society independently of this Act such sum as would have been transferred to the Post Office fund had the member ceased to be a member of the society and become a deposit contributor, and so much of any reserve value which may have been credited to the society in respect of him as would in such a case have been cancelled shall be cancelled.

S. 33 main members of approved societies.

See Appendix I. 15 (c).

"**Transfer from the account . . . independently of this Act.**"—There are other cases similar in character to this, to which, however, this section does not apply. See, *e.g.*, the First Schedule, Part II (*g*) and the proviso to s. 1 (3) *supra*.

"**Become a deposit contributor.**"—See s. 43 (1) (*a*) *infra*.

34.—A person shall not be or attempt to become a member for the purposes of this Part of this Act of more than one approved society at the same time, or, being a deposit contributor, to become at the same time a member for the purposes of this Part of this Act of an approved society, but nothing in this Act shall prevent any person who is a member of an approved society under this Part of this Act becoming a member of the same or any other society independently of this Act, or prevent a deposit contributor becoming a member of any society independently of this Act, or affect the

Prohibition against double insurance.

S. 34 right of an approved society to reject or expel from membership any person not being an insured person, or the rights or liabilities of an approved society or of any member thereof arising otherwise than under this Part of this Act; and, subject to the provisions of this Part of this Act, all rules made by a society which becomes an approved society or any branch thereof shall remain and be of the same force and effect as though this Act had not been passed.

"**Subject to the provisions of this Part of this Act.**"—Especially ss. 14, 24, 25 and 27 *infra*, and 72 and 73 *infra*.

Accounts: Valuations: Surplus and Deficit.

Approved societies to keep proper accounts.

35.—(1) Every approved society and every branch of an approved society must—

(*a*) Keep its books and accounts under this Part of this Act separate from all other books and accounts of the society or branch, and in such form as may be prescribed by the Insurance Commissioners, and, when required, submit them to audit by auditors to be appointed by the Treasury;

As to accounts of branches, cf. s. 27 (1) *d*. The keeping of separate accounts for each fund must already be provided for by the rules [F.S.A., 1896, First Schedule (10)]. See Appendix I, 9 *fa*.

"**Audit.**"—Annual audit is required by the F.S.A., 1896, s. 20.

"**Appointed**" and paid [s. 57 (3) *infra*]; public auditors are at present appointed by the Treasury under s. 30 of the F.S.A., 1896, but societies need not employ them, and must pay them if they do.

(*b*) Submit to have its assets and liabilities under this Part of this Act valued in accordance with the provisions of this Part of this Act;

See s. 36 *infra*. A quinquennial valuation is at present provided for, though not in all cases compulsorily, by the F.S.A., 1896, s. 28.

(*c*) In the event of a surplus or deficiency being shown upon any such valuation, comply with the provisions relating to surpluses and deficiencies hereinafter contained ; S. 35 (1) (*c*)

"**Surpluses.**"—See ss. 37, 39, and 83 (3) *infra.*

"**Deficiencies.**"—See ss. 38, 39, and 83 (3) *infra.*

(*d*) Render such returns as the Insurance Commissioners may require.

As to the annual returns at present required see the F.S.A., 1896, s. 27 ; and for the return which may be substituted for valuation, cf. s. 28 (1) (*b*), (3), of that Act.

(2) Regulations made under this section shall provide for a separate account being kept showing the amount expended on administration, and for limiting the amount which may be carried to that account out of the contributions under this Part of this Act, and for requiring any deficiency in such account (if not otherwise defrayed) to be met forthwith by a special levy.

"**Separate account.**"—See note to subs. (1) (*a*) *supra.* It will not be necessary or possible under this Act to keep (as is now required) the contributions in respect of each benefit in a separate fund, but it will be highly desirable to keep a separate account of the expenditure on each.

"**Limiting the amount.**"—The amount allowed in the actuarial estimate (Cd. 5, 983) was 3*s.* 8*d.* per member per annum (allowing for arrears), or ·92*d.* per week.

"**If not otherwise defrayed,**" *e.g.*, by fines [s. 14 (*a*) *supra*], or by contributions independent of this Act [s. 34 *supra* and (4) *infra*].

"**Special levy.**"—Cf. s. 38 *infra*, but note that the method of enforcing payment through the employer [s. 38 (1) (*c*)] will not be available in this case. Probably also it will not be possible to take into account arrears of such a levy under s. 10, because the effect would really be to charge the amount against benefits.

(3) The provisions of this Part of this Act relating to accounts, audit valuation and returns shall, as respects the transactions of any approved society

s. 35 (3) or branch thereof under this Part of this Act, be substituted for such of the provisions of any Act regulating the constitution of the society or branch as deal with the like matters.

"**Accounts**."—See the Friendly Societies Act, 1896, ss. 2 (2), 9 (2), 29, 40, 55, First Schedule (5), (7), (10).

The Industrial and Provident Societies Act, 1893, ss. 13, 16, 17, 18, 48.

The Shop Clubs Act, 1902, s. 3, Schedule (v), (vii), (ix).

The Trade Union Act, 1871, ss. 11, 14 (1), First Schedule (5), (6).

"**Audit**."—See the Friendly Societies Act, 1896, ss. 26, 30, 39 "Conditions for Public Auditors," issued by the Registrar.

The Collecting Societies Act, 1896, s. 5 (2).

The Industrial and Provident Societies Act, 1893, ss. 10 (1), 13, 16, 72, Second Schedule (8).

The Shop Clubs Act, 1902, s. 3, Schedule (v).

The Trade Union Act, 1871, ss. 11, 14 (1), First Schedule (5).

"**Valuation**."—See the Friendly Societies Act, 1896, ss. 2 (2), 9 (2), 28, 29, 30, 98 (3), First Schedule (11). "Instructions to Public Valuers," issued by the Registrar. The Shop Clubs Act, 1902, s. 3, Schedule (v).

"**Returns**."—See the Friendly Societies Act, 1896, ss. 2 (3), 9 (2), 27, 39, 52 (7), 84 (4), (5), 98 (3), First Schedule (6).

The Collecting Societies Act, 1896, s. 5 (2).

The Licensing Act, 1902, s. 25 (3).

The Industrial and Provident Societies Act, 1893, ss. 14, 15, 20, 62 (1), (3).

The Shop Clubs Act, 1902, s. 3, Schedule (v).

The Trade Union Act, 1871, s. 16.

"**The provisions of any Act**."—See the above notes; the effect is also to supersede the existing rules with regard to these matters, since the rules are required by statute to deal with them.

The existing Acts and rules will continue to apply to transactions outside this Act, *i.e.*, those relating to members who are not "insured persons" within s. 1, or within ss. 46 or 49, and those dealt with in s. 34; one effect will be that societies transacting both classes of business will have to be valued triennially under this Act [s. 36 (1)], and quinquennially under some of the other Acts, *e.g.*, the F.S.A., 1896, s. 28.

(4) In the case of a society or branch transacting other business besides that of insurance business under this Part of this Act, all funds and credits of the society or branch under this Part of this Act shall be as absolutely the security of the members for the purposes of this Part of this Act as if they

belonged to a society or branch carrying on no other business than such insurance business, and shall not be liable for any contracts of the society or branch for which they would not have been liable had the business of the society or branch been only that of such insurance, and shall not be applied directly or indirectly for any purposes other than those of insurance business under this Part of this Act. S. 35 (4)

Where a separate section of a society has been established and such separate section is an approved society under this Part of this Act, the expression "society" in this subsection means the society of which the separate section has been established and not the separate section.

"**Other business.**"—Whether business similar to, but independent of, that transacted under this Act, or business of an entirely different character. Since, in the case of a "separate section," "society" here means the parent society, the other business would include trading for profit in any manner whatever.

"**Shall not be applied . . . this Part of this Act.**"—In particular, a society is prohibited by these words from charging to administration account [subs. (2) *supra*] any expenses incurred in connection with other business.

"**Separate section.**"—S. 23 (1) *supra*.

Valuations of approved societies.

36.—(1) A valuation of the assets and liabilities arising under this Part of this Act of every approved society and of every branch of an approved society shall be made by a valuer, to be appointed by or with the approval of the Treasury, at the expiration of every three years dating from the commencement of this Act, or at such other times as the Insurance Commissioners appoint; the times so appointed may be at shorter or longer intervals than three years and at regular or irregular intervals, and may apply to all approved societies or any particular society or societies.

S. 36 (1) "**Liabilities arising under this Part of this Act.**"—Including, after the first valuation which shows a disposable surplus, liabilities under any scheme for additional benefits [see s. 37, especially (1) (b)], but not under a scheme made in virtue of s. 72 *infra*.

"**A valuer to be appointed by . . . the Treasury.**"—Appointed and paid [s. 57 (3)]. Public valuers are already appointed by the Treasury under the Friendly Societies Act, 1896, s. 30. See the "Instructions to Public Valuers," issued by the Registrar of Friendly Societies. In this Act a "valuer" means "a person possessing such actuarial qualifications as may be approved by the Treasury" (s. 79 *infra*).

"**The commencement of this Act.**"—See s. 115 *infra*.

(2) Every such valuation shall be made on such basis as may be prescribed.

"**Basis.**"—It appears from s. 63 (4) *infra* that the Insurance Commissioners are to prepare tables showing the average expectation of sickness for the purpose of valuations. They will also prescribe the rate of interest to be assumed for that purpose. See Appendix I. 9 (b).

Surplus. **37.**—(1) If upon any such valuation a surplus (certified by the valuer to be disposable) is found, the following provisions shall apply:—

(*a*) If the society is not a society with branches, the society may submit to the Insurance Commissioners a scheme for distributing out of such surplus any one or more additional benefits among insured persons who are members thereof for the purposes of this Part of this Act and, upon any such scheme being sanctioned by the Insurance Commissioners, the society may distribute such additional benefit or benefits in accordance with the provisions thereof:

"**Society with branches.**"—See ss. 27 *supra* and 40 and 79 *infra*.

"**Additional benefits.**"—See the Fourth Schedule, Part II, under s. 8 (1) (*f*) *supra*. See also Appendix I. 9 (*a*).

(*b*) If the society is a society with branches, any surplus in the central fund of the society, including any surplus transferred from the branches to the society under the provisions of this section, shall, subject to the provisions of the next succeeding section of this Act, be applied in the first instance towards making good any deficiency shown by any of its branches; and the society may distribute the balance of the surplus, after making good deficiencies as aforesaid, amongst such of its branches as have a surplus in proportion to the amounts of such surpluses, and the sum so apportioned to a branch shall be treated as an addition to the disposable surplus of that branch: S. 37 (1) (*b*)

"The provisions of the next succeeding section."—S. 38, especially (1) (*a*).

"Towards making good any deficiency."—In the unlikely event of the surplus being insufficient to make good three-quarters of the deficiencies in all the branches which have a deficiency, it is apparently left to the discretion of the central body on what basis the sum available is to be distributed.

(*c*) If, on the valuation of a branch of an approved society, a surplus is shown in respect of such branch, there shall be transferred to the central body or other central authority of the society of which it is a branch one-third of the surplus, and the branch may, with the approval of the society, submit to the Insurance Commissioners a scheme for distributing out of the remaining two-thirds of such surplus, together with any such addition as aforesaid, any one or

S. 37 (1) (c)

more additional benefits, and, upon any such scheme being sanctioned by the Insurance Commissioners, the branch may distribute such additional benefit or benefits in accordance with the provisions thereof:

"**Transferred to the central body.**"—To make good the deficiencies, if any, of other branches.

"**Any such addition as aforesaid.**"—*i.e.*, any part of the central surplus and of the one-third so transferred which is distributed by the central body under (*b*).

"**Additional benefits.**"—See s. 8 (1) (*b*) and the Fourth Schedule, Part II, *supra*.

(*d*) If, at any time after a scheme submitted by a society or branch has been so sanctioned as aforesaid, there is found to be a deficiency in the funds of the society or branch, no additional benefits shall be distributed under the scheme until such deficiency is extinguished and a surplus shown.

"**Of the society or branch.**"—This probably does not mean, in the case of a society with branches, that a scheme sanctioned in connection with a branch is to be suspended because there is a deficiency in some other branch or branches; "the society" refers only to a society without branches [(*a*) *supra*].

(2) A scheme made under this section may prescribe the conditions to be complied with as respects any additional benefit conferred by the scheme, and every such scheme shall so far as practicable provide for the reduction, suspension, or deprivation of the additional benefits conferred by the scheme in the case of members who are in arrears, and may make a corresponding reduction in the amount to which such members are to be

deemed to be in arrears for the purpose of reckoning the rate of sickness benefit. S. 37 (2)

"In arrears."—See s. 10 *supra*.

"Corresponding reduction."—*i.e.*, the member in arrears is to be credited with the value of the additional benefits to which he would otherwise be entitled, as if it were paid off his arrears under s. 10 (5); but the whole of the provisions of that subs. are not applicable to such a case.

(3) No surplus and no part of any surplus shall be applied for the purpose of paying any benefits payable on death or any benefits other than one or more of the additional benefits specified in Part II of the Fourth Schedule to this Act.

38.—(1) If upon any such valuation a deficiency is found, the following provisions shall apply:— Deficit.

(*a*) If the deficiency is shown by a branch of an approved society, three-quarters, or, if the society thinks fit, the whole thereof, shall, in the first place, so far as possible, be made good out of any surplus available for that purpose in the hands of the central body or other central authority of the society:

Provided that the society may, if it is satisfied that the deficiency is due to any maladministration on the part of the branch in question, with the consent of the Insurance Commissioners, refuse to make good any part of the deficiency out of such surplus:

"Surplus in the hands of the central body."—See s. 37 (1) (*b*) and (*c*) *supra*.

"Maladministration."—As to misappropriation by branch officers see s. 26 (2) *supra*; but the maladministration here referred to would be principally the allowance of unjustifiable claims by members (see s. 71).

S. 38 (1) (*a*) "**Refuse to make good.**"—In which case a scheme would have to be made under the next s. (*b*).

(*b*) Subject as aforesaid, every deficiency shall be made good in accordance with a scheme for that purpose to be prepared by the society, or, in the case of a deficiency in a branch, by the branch subject to the approval of the society, and submitted to the Insurance Commissioners for their sanction; such a scheme shall provide for making good the deficiency, within a period of three years from the date at which the valuation was made, in any one or more of the following ways:—

"**Every deficiency.**"—i.e., the whole deficiency in the case of a society without branches, and in the case of a branch such part of it as the society does not make good. See Appendix I, p. 60.

(i) By a compulsory levy, by way of increase of the weekly rate of contributions, upon members of the society or branch being insured persons;

See (c) and (d) *infra*.

(ii) By reducing the rate of sickness benefit either for the whole period during which sickness benefit is payable or for any part thereof;

(iii) By deferring the day as from which sickness benefit becomes payable;

Cf. the Fifth Schedule, under s. 10 (2) *supra*.

(iv) By reducing the period during which sickness benefit is payable;

S. 8 (1) (*b*) *supra*; disablement benefit (*d*) would, nevertheless, begin to be payable at the termination of that period.

(v) By increasing the period which is required by this Part of this Act to elapse between two periods of disease or disablement to prevent the one being treated as a continuation of the other; S. 38 (1) (b)

See s. 8 (5) *supra*.

(vi) By any other method approved by the Insurance Commissioners,

and, on the sanction of the Insurance Commissioners being given to the scheme, the society or branch shall proceed to make good the deficiency in accordance therewith :

(*c*) Payment of the amount of any compulsory levy made in accordance with a scheme sanctioned under this section may be enforced in such manner as may be provided by the rules of the society or branch ; and, where those rules so provide, it shall be lawful for the society or branch in the case of any member to enforce payment of the amount of the levy by giving notice in the prescribed manner to the employer of such member requiring him to pay the amount of the levy, and, upon such notice being given, such amount shall be payable as if it were part of the contribution to be paid by the employer on behalf of the member, and all the provisions of this Part of this Act relating to the payment of such contributions and the recovery thereof from members shall apply accordingly :

"**Where those rules so provide.**"—If the original rules do not so provide, an amendment (if the original rules give power of amend-

S. 38 (1) (c) ment) may be passed for the purpose, and no registration will be binding on all members, and branches (see the Friendly Societies Act, 1896, s. 13 (1)), and *Gutherlet* v. *Woodgate* (R.C.R. (1895), 32); *Smith* v. *Galloway*, 1898, 1 Q.B. 71) unless a policy or other secondary contract has been entered into.

"All the provisions . . . shall apply accordingly." See s. 4, the Second and Third Schedules, and s. 7 *supra*, and ss. 60, 70 and 110 *infra*; the levy would of course be recoverable by the employer from the member. This provision can only apply to "employed contributors." Apart from it there is no means of recovering the levy from members of societies or branches registered under the Friendly Societies Act, 1896 (see s. 23), or under the Trade Union Act, 1871 (see s. 4 (2)). Where the levy is not in any way recoverable the only effect will be that the members will be in arrears and may be dealt with according to the rules.

(*d*) If a member chargeable with a levy falls into arrears, his arrears shall reckon as though the total sum thereof, inclusive of the levy, consisted of the contributions payable by or in respect of him had no levy been made:

See s. 10 (7) *supra*; subject to regulations to be made under that section the effect appears to be that the total sum, or if the society should excuse payment of the employer's contribution under s. 10 (6), which is unlikely under the circumstances, then the remainder, is to be divided by the amount of the weekly contribution payable by or in respect of him apart from the levy, the quotient being treated as the number of weeks for which the member is in arrear.

(*e*) If within six months after the declaration of a deficiency, or, where an inquiry as to excessive sickness is pending under this Part of this Act, such longer period as the Insurance Commissioners determine, such scheme as aforesaid has not been submitted to and sanctioned by the Insurance Commissioners, or if at any time thereafter it appears to the Insurance Commissioners that the society or branch to which the scheme relates is not enforcing the provisions of the scheme, the

Insurance Commissioners may take over the administration of the affairs of the society or branch under this Part of this Act, and shall as soon as possible thereafter take such steps as they may think necessary to make good the deficiency by any or all of the methods mentioned in paragraph (*b*) of this section, and for that purpose they shall be entitled to exercise all or any of the powers given to the society or branch by this Part of this Act: S. 38 (1) (*e*)

"Excessive sickness."—See s. 63 *infra*.

"Submitted to and sanctioned by."—Strictly the effect of these words is that by refraining from sanctioning a scheme submitted to them, the Commissioners can give themselves power to take over the affairs of the society, but no doubt this will not occur.

(*f*) The Insurance Commissioners after taking over the administration of the affairs of any society or branch shall within a reasonable time, not exceeding three years, make arrangements for the restoration to the society or branch of its powers of self-government or, failing that, for the transfer of the members of the society or branch, being insured persons, to other approved societies or branches or to the Post Office fund:

"Transfer . . . societies or branches."—See s. 31 *supra*.
"Or to the Post Office Fund."—See s. 43 (1) (*a*) *infra*.

(*g*) Any question or dispute arising between the Insurance Commissioners and the society or branch in respect of the amount of the deficiency, or as to the adequacy of any scheme proposed for making it good, shall

S. 38 (1) (g)

be submitted to an independent valuer to be appointed by the Lord Chief Justice, and such valuer shall, subject to the provisions of this Act and of the regulations thereunder, act, so far as practicable, on his own knowledge and experience, and shall have power to determine how and by what parties the costs of proceedings, including his own remuneration, not exceeding such amount as the Treasury may prescribe, are to be defrayed, and his decision shall be final and conclusive :

"**The amount of the deficiency.**"—Practically this is an appeal from the valuer to be appointed by the Treasury under s. 36 (1) *supra*, although the "independent" valuer would not be entitled to find that there was no deficiency.

"**Independent valuer.**"—Who must nevertheless be a "person possessing such actuarial qualifications as may be approved by the Treasury" (s. 79).

"**Subject to . . . regulations thereunder.**"—He will therefore be bound by the Tables prepared by the Commissioners for the purpose of valuation [s. 36 (1) and 63 (4)].

"**Final and conclusive.**"—Although he is a valuer, it seems a dispute is to be submitted to him, not only on a question of amount, but also as to the adequacy of a scheme. It is, therefore, open to question whether he is not really an arbitrator, and as such bound to state a case, if required, on a question of law, such as the application of the provisions of this Act and of the regulations thereunder. See note to s. 63 (5) *infra*.

(*h*) A scheme made under this section shall not affect any person who becomes a member of the society or branch after the date as at which the valuation was made, or any member over seventy years of age :

"**Over seventy.**"—See ss. 4 (3), 5 (2), and 8 (3) *supra*.

(*i*) Any insured person who, having been a member of the society or branch at the date as at which the valuation disclosing the

deficiency was made, is transferred to another society or to another branch of the same or any other society before the deficiency is made good, shall be liable to any levy or reduction of benefits which has been or may be made in respect of such deficiency in like manner in all respects as if he had not ceased to be a member, and if the transfer took place before the scheme imposing the levy or reduction of benefits was sanctioned, such adjustment in the amount of any transfer value paid in respect of him shall be made as the circumstances require.

S. 38 (1) (*i*)

"**Transferred to another society.**"—See ss. 31–3 *supra*. If he becomes a "deposit contributor" [see ss. 42, 43 (1) *infra*], or drops out of insurance altogether, apparently he will escape the liabilities of this section.

(2) Any member liable to a levy payable at intervals may relieve himself of the liability thereto, and a member subject to a diminution of benefits by virtue of any such scheme may, with the consent of the society or branch, acquire a right to undiminished benefits on payment to the Insurance Commissioners of the capitalised value of the levy or diminution of benefits, as the case may be, ascertained in the prescribed manner.

Cf. s. 9 (4) *supra*, and Appendix I. 9 (*c*).

39.—(1) Subject to the provisions of this section all approved societies which at the date of any valuation have less than five thousand insured persons as members for the purposes of this Part of this Act shall, for the purposes of the valuation—

Pooling arrangements in the case of small societies.

S. 39 (1) (*a*)

(*a*) if they have joined an association formed under this section, be associated with the other societies in the same association; and

(*b*) if they have not joined any such association, be grouped together according to the localities in which they carry on business.

"**Subject to the provisions.**"—See subs. (7) *infra*.

"**Date of any valuation.**"—See s. 36 (1) *supra*.

"**Five thousand insured persons.**"—In arriving at this number it will be necessary to exclude (*a*) honorary members [see the proviso to s. 23 (1)]; (*b*) persons who are insured independently of this Act; and probably also (*c*) persons who are insured under this Act, but have elected to receive their benefits under the Act through some organisation other than the society in question. This is probably the intention, though the words are clearly capable of the opposite interpretation [see s. 1 (1) *supra*].

"**For the purposes of valuation.**"—The management will in other respects be left entirely to the society itself, and the rules of such societies need not be uniform. See subs. (8).

"**An association.**"—See subs. (2), (4).

"**Grouped.**"—See subs. (3), (4).

"**Localities.**"—See subs. (5).

(2) Any such societies may, with the consent of the Insurance Commissioners, form for the purposes of this section an association with a central financial committee, provided that the aggregate number of insured persons who are members of the associated societies is not less than five thousand, and the conditions on which a society shall be entitled or allowed to join, or having joined to secede from, an association, shall be such as may be prescribed.

See Appendix I. 16 (*c*).

"**Any such societies.**"—Irrespective of locality.

"**Central financial committee.**"—See subss. (4), (8).

"**Not less than five thousand.**"—See note to subs. (1) *supra*.

"**Secede from.**"—Cf. s. 28 *supra*.

(3) Any such society which has not joined any

such association as aforesaid, and which carries on business in any county or county borough, shall, for the purposes of this section, be grouped with the other unassociated societies carrying on business in the same county or county borough. S. 39 (3)

"**Carries on business.**"—See subs. (5).

"**Other unassociated societies.**"—*i.e.*, with less than 5,000 members, as provided in subs. (1) *supra*. Under what management is not here specified, but from the next two subss., it appears that the Insurance Committee is to manage the group.

(4) The provisions of this Part of this Act as to the application of surpluses of branches of societies with branches shall apply to such associated and grouped societies as if all the societies in any association or group were branches of a single society, subject to the following modifications :—

"**The provisions.**"—See ss. 37 (1) (*a*) and (*c*), and 38 (1) (*a*).

(*a*) A reference to the central financial committee in the case of an association, and to the Insurance Committee for the county or county borough in the case of a group, shall be substituted for the reference to the central authority of the society ;

"**Be substituted.**"—It will also be necessary to substitute "society" for "branch."

(*b*) The approval of the central financial committee or Insurance Committee shall not be required to any scheme prepared by an associated or grouped society for the distribution of any surplus.

"**Scheme.**"—S. 37 (1) (*c*), but it will still be required to a scheme for making good a deficiency [s. 38 (1) (*b*)].

(5) Where an associated or grouped society is a society with branches, the provisions of this Part of

S. 39 (5) this Act relating to surpluses and deficiencies of societies with branches (except those requiring the approval of a society to a scheme prepared by a branch as to the distribution of a surplus or the making good of a deficiency) shall not apply to the society, but each branch shall, for the purposes of this section, be deemed to be a separate society.

"The provisions . . . deficiencies."—Ss. 37, 38.

"Those requiring the approval."—Ss. 37 (1) (*b*) and 38 (1) (*b*).

(6) For the purposes of this section, a society shall be deemed to carry on business only in the county or county borough in which its registered office or other principal place of business is situate:

Provided that where of the insured persons who are members of a grouped society at the date of any valuation more than one hundred or more than one-sixth reside in some county or county borough other than that in which the registered office or other principal place of business is situate, the proper proportion of any surplus or deficiency of the society shall, if application for the purpose is made by any of the Insurance Committees concerned, be apportioned to the Insurance Committee of that other county or county borough, such proportion to be determined, in default of agreement between the Insurance Committees concerned, by the Insurance Commissioners.

"**Registered office.**"—See the F.S.A., 1896, s. 24 (1). Where a society is really a separate section of another society not itself approved, and the separate section is not registered [see the proviso to s. 23 (1)], the registered office of the parent society (see the Industrial and Provident Societies Act, 1893, s. 11, the Companies Act, 1908, s. 62 &c.) will be the office intended here, unless the separate section has some "other principal place of business."

"**Other principal place of business.**"—Either where there is no registered office, if neither the society itself nor the parent

society is registered, or where the registered office is not the "principal place of business," which it need not necessarily be [cf. F.S.A., 1896, s. 40, and note to the First Schedule, Part I. (*b*) under s. 1 (2) *supra*]. S. 39 (6)

(7) The Insurance Commissioners may exempt from this section any society consisting of persons entitled to rights in a superannuation or other provident fund established for the benefit of persons employed by one or more employers, if the employer, in addition to the contributions payable by him under this Part of this Act, is responsible for the solvency of the fund, or for the benefits payable thereout, or is liable to pay a substantial part of, or to make substantial contributions to, or substantially to supplement the benefits payable out of the fund, and this section shall not apply to any society to which such an exemption has been granted.

Such a society must comply with the conditions of s. 25 *supra*, in order to be approved. See the notes to that section.

(8) Except so far as relates to the power of refusing to make good any part of a deficiency due to maladministration on the part of any society, nothing in this section shall be construed as conferring on any central financial committee or Insurance Committee any powers of control over the administration of associated or grouped societies.

"Refusing to make good."—See the proviso to s. 38 (1) (*a*).

Special provisions with regard to societies with branches.

40.—(1) Where a society with branches is so organised that the branches in different geographical areas are grouped together for the purposes of this section, the branches in any such area may, if and to such extent as the rules of the society so provide, and if the number of members of the branches being insured persons in the area exceeds five thousand, be

S. 40 (1) treated for the purposes of the provisions of this Part of this Act relating to valuations, surpluses, and deficiencies as if they formed a separate society.

"**Society with branches.**"—See notes to ss. 23 (1) and 27 *supra*, and 79 *infra*.

"**Number of members.**"—This must probably mean "being insured persons," (cf. s. 39 (1) *supra*.

"**The provisions.**"—Ss. 35–38. The effect will be that the district (or group) will neither contribute towards the deficiencies, nor benefit from the surpluses, of other districts or of the society as a whole.

(2) The rules of any society with branches may provide for the branches reinsuring with the society their liabilities in respect of any of the benefits under this Part of this Act, or, if the society is so organised as aforesaid, for such reinsurance either with the society or with the group.

Cf. s. 20 *supra*.

(3) Where a society with branches has among its members insured persons who are not members of any branch, and the benefits of such members are administered by the society itself, such members shall be treated for the purposes of this Part of this Act relating to valuations, surpluses, and deficiencies as if they formed a separate branch.

Power to separate men's and women's funds.

41.—Where an approved society, not being a society with branches, has amongst its members both men and women, and the rules of the society so provide, the provisions of this Part of this Act with respect to valuations, surpluses, and deficiencies shall apply to the society as if it were a society consisting of two branches, the one comprising the male members and the other comprising the female members.

"**Not being a society with branches.**"—See notes to s. 23 (1), 27, and 40 *supra*, and 79 *infra*. In a society with branches it will

of course be possible for the funds to be separated if some branches consist entirely of male, and others of female, members. But a branch containing both will not be able to separate its funds. In any case each sex will assist the other in the matter of deficiencies.

S. 41 —

"**The provisions.**"—Ss. 36–8 *supra*.

Deposit Insurance.

Provisions as to deposit contributors.

42.—Until the first day of January nineteen hundred and fifteen, the following provisions shall apply in the case of insured persons (in this Act referred to as deposit contributors) who have not joined an approved society within the prescribed time, or who, having been members of an approved society, have been expelled or have resigned therefrom and have not, within the prescribed time, joined another approved society :—

"**Until . . . nineteen hundred and fifteen.**" — Before which date it will be necessary for Parliament, with fuller information derived from the working of the scheme, to make other arrangements.

"**Have not joined an approved society . . . expelled.**" —See s. 30, and as to expulsion of branches, s. 28 (3) *supra* ; presumably this includes dissolution [s. 28 (2)], and withdrawal of approval (s. 29). See also Appendix I. 15 (*d*).

"**Joined another approved society.**"– See s. 31 *supra*.

(*a*) Contributions by or in respect of a deposit contributor shall be credited to a special fund to be called the Post Office fund :

"**Contributions.**"—See s. 4 and the Second Schedule *supra*.

"**The Post Office Fund.**"—The whole of this fund, so far as not required to meet current expenses, will be invested in accordance with s. 54 (3) *infra*. In addition to the interest so earned [s. 54 (4)] the fund will be swelled by three-sevenths (or in the case of a woman, one-half) of the sums standing to the credit of deposit contributors who die [see (*f*) *infra*], including (if she dies before her husband), the one-third which an insured woman leaves on marriage, as a deposit for widowhood [s. 44 (4)], or who cease permanently to reside in the United Kingdom [see (*g*) *infra*]. Also by the excess of the amounts standing to the credit of deposit contributors who are transferred to approved societies over the value of their contributions [s. 43 (2) (*a*) *infra*]. There is no provision in the Act as to the disposal of these accretions of value, though they might be used under paragraph (*b*). This will have to be dealt with by Parliament before January 1st, 1915.

S. 42 (*b*)

(*b*) The sums required for the payment of any sickness, disablement, or maternity benefit payable to a deposit contributor, except so far as they are payable out of moneys provided by Parliament, shall be paid out of the moneys standing to his credit in the Post Office fund, and his right to benefits under this Part of this Act shall be suspended on the sums standing to his credit in that fund being exhausted, except that his right to medical benefit and sanatorium benefit shall continue until the expiration of the then current year, and that the Insurance Committee, if it has funds available for the purpose and thinks fit so to do, may allow him to continue to receive medical benefit or sanatorium benefit or both such benefits after the expiration of such year :

"**Sickness, disablement or maternity benefit.**"—See s. 8 (1) (*c*) (*d*) and (*e*) respectively.

"**Payable out of moneys provided by Parliament.**"—See s. 3 *supra*.

"**Suspended . . . exhausted.**"—The provisions with regard to arrears (s. 10, *supra*), including the right to wipe them out by payment [*ib.* (5)], do not apply to deposit contributors. It appears from s. 79 (*infra*) that an employed deposit contributor, while "temporarily unemployed" as there defined, is strictly not entitled, even if he could or would, to treat himself as a voluntary contributor or otherwise to pay contributions during that time (*supra*); but this can hardly be the intention.

"**Medical benefit and sanatorium benefit.**"—See s. 8 (1) (*a*) and (*b*) respectively.

"**The then current year,**" *i.e.*, calendar year.

"**Funds available for the purpose.**"—See s. 15 (6) (7) and (8) as to medical benefit, and ss. 16 (2) and 17 *supra* as to sanatorium benefit, as well as (*d*) and (*e*) and s. 61 (1) and (3) *infra*.

(*c*) Such sum as may be prescribed shall in each

year be payable in respect of each deposit contributor towards the expenses incurred by the Insurance Committee in the administration of benefits: S. 42 (c)

"**Administration of benefits.**"—See ss. 14 (1), (3), 15, 16, 18 *supra*, and 61 *infra*.

(*d*) Such sum as the Insurance Committee may, with the consent of the Insurance Commissioners, determine shall in each year be payable in respect of each deposit contributor for the purposes of the cost of medical benefit:

"**The cost of medical benefit.**"—See s. 15 *supra*, and Appendix I. 7.

(*e*) The sums payable in respect of a deposit contributor for the purposes of medical benefit and sanatorium benefit, and towards the expenses of administration, shall, except so far as they are payable out of moneys provided by Parliament, be deducted at the commencement of each year from the amount standing to his credit in the Post Office fund, and if at the commencement of any year the amount so standing to his credit is insufficient to provide such sums, he shall not, unless the Insurance Committee consents, and except subject to such conditions as that committee may impose, be entitled to any benefits during that year:

"**Sanatorium benefit.**"—See s. 16, especially subs. (2) (*a*), *supra*. Since medical and sanatorium benefits are to continue throughout life, this deduction will have to be made after the contributor attains the age of seventy.

S. 42 (*e*) "**Out of moneys provided by Parliament,**" *i.e.*, two-ninths in the case of men, and one-quarter in the case of women (s. 3 *supra*); also (in the case of medical and sanatorium benefit) if those funds are insufficient, the Treasury may contribute one-half of the estimated excess, the other half being paid by the council of the county or county borough; and in the case of sanatorium benefit there is a further Parliamentary grant of 1d. per member [s. 16 (2) (*b*)].

"**Unless the Insurance Committee consents.**"—The consent would presumably be given if at any time during the year the credit became sufficient to provide such sums.

(*f*) Upon the death of a deposit contributor, four-sevenths (or in the case of a woman one-half) of the amount standing to his credit in the Post Office fund shall be paid to his nominee or, in default of a nomination, to the person entitled to receive the sum as if it were money payable on the death of a member of a registered friendly society, and the balance thereof shall be forfeited, and sections fifty-six to sixty-one of the Friendly Societies Act, 1896, as amended by any subsequent enactment, shall, subject to the prescribed adaptations, apply accordingly:

"**Four-sevenths . . . one-half.**"—Being the proportion which the contributor (if an employed contributor) has himself paid: a voluntary contributor has of course paid the whole. The balance goes to the general credit of the Post Office fund [see (*a*) *supra*].

"**Nominee.**"—Nomination must be made by writing under the hand of the nominator, delivered (before his death) at the registered office of the society or branch, or in a book kept there [F.S.A., 1896, s. 56 (1)]; the nominee must not be an officer or servant, including a member of committee (*ib.* s. 106), of the society or branch, unless he be a near relative of the nominator [*ib.* s. 56 (3)]; the nomination may be revoked in the same way as made [*ib.* (4)], and shall be revoked by marriage [*ib.* (5)]. The society is to pay the money to the nominee on satisfactory proof of death [*ib.* s. 57 (1)], which must be by a registrar's certificate in any case where the death is, or ought to be, registered [*ib.* s. 61 (1)], except in case of death at sea, or by an accident where the body cannot be found, or where an inquest is pending [*ib.* (2)]. Payment without a certificate is an offence (*ib.* s. 84), though certificates are to be granted at a reduced fee of 1*s.* (*ib.* s. 97); but as the two latter

sections not being mentioned in this paragraph it is doubtful whether an Insurance Committee will be subject to either. S. 42 (*f*)

"**Or in default . . . registered friendly society.**"—In case of intestacy of a member, the sum standing to his credit may be distributed by the society, without letters of adminstration, among such persons as appear to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled by law to receive it [F.S.A., 1896, s. 58 (1)], and if the member was illegitimate, among such persons as would have been entitled to it if he had been legitimate [*ib.* (2)]; the society is protected against claims by other parties if the trustees have acted to the best of their knowledge in accordance with the Act [*ib.* s. 60 (1)], but not if, even with the consent of a majority of the next-of-kin, they have paid more than his share to one of them (*Symington* v. *Galashiels C.S. Ltd.*, 21. Rett. 371); they are protected if they have paid on a nomination in ignorance of a subsequent marriage which revoked it [*ib.* (2)]. As an Insurance Committee will not have any trustees (s. 59 *infra*), it is presumed that the Committee as a whole will exercise the discretion in case of intestacy.

"**Sections fifty-six . . . 1896.**"—Other than those enumerated in the last two notes, the provisions of these sections are not likely to be applicable to cases under this paragraph.

(*g*) Where a deposit contributor proves to the satisfaction of the Insurance Committee that he has permanently ceased to reside in the United Kingdom, four-sevenths (or in the case of a woman one-half) of the amount standing to his credit in the Post Office fund may be paid to him.

"**Permanently ceased to reside.**"—And is therefore disentitled to benefit [s. 8 (4) *supra*]; a member of an approved society has not this right (cf. s. 33 *supra*), though a deposit contributor has the same right as a member of an approved society of transferring to a foreign or colonial society [ss. 32 (1) and 43 (2)].

"**Four-sevenths.**"—See note to (*a*) *supra*, as to the disposal of the balance.

43.—(1) If an insured person, being a member of an approved society, ceases to be a member of that society, whether voluntarily or by expulsion, and fails to become within the prescribed time a member of another approved society, then— Transfer from approved society to deposit insurance and vice versâ.

(*a*) if he becomes a deposit contributor, his transfer value shall be carried to his credit

S. 43 (1) (a) —

in the Post Office fund: Provided that, if a reserve value has been credited to the society in respect of him, such part of that reserve value as is still outstanding (or if the amount so outstanding exceeds the transfer value such part of the reserve value as is equal to the transfer value) shall be cancelled, and the amount, if any, by which the transfer value exceeds the amount so cancelled shall be carried to the credit of the deposit contributor;

"**If he becomes a deposit contributor.**"—For the conditions on which he will do so, see s. 42 and notes *supra*.

"**Transfer value.**"—See s. 31 *supra*, but note that that section in terms refers only to persons who join another approved society. The calculation is, however, presumably to be made on the same basis, *i.e.*, "the liability under this part of this Act of the first-mentioned society in respect of him."

"**Reserve value.**"—See s. 55 and notes *infra*.

"**Still outstanding.**"—*i.e.*, not written off in accordance with s. 55 (4) *infra*. The reserve value is fixed once and for all at the date of entry into insurance [s. 55 (1)]; it is then the same as the transfer value, but the latter varies at different ages.

(*b*) if he does not become a deposit contributor, his transfer value shall be carried to such account and dealt with in such manner as may be prescribed.

"**If he does not become a deposit contributor.**"—*i.e.*, if he drops out of insurance altogether; in view of the words "shall apply" at the beginning of s. 42 *supra*, it follows that if after the "prescribed time" any further contributions are paid by or in respect of him, he must become a deposit contributor. See Appendix I. 15 (*e*).

(2) If an insured person who is a deposit contributor subsequently becomes a member of an approved society for the purposes of this Part of this Act, there shall be transferred to the society the amount standing to his credit in the Post Office fund:

S. 43 (2) —

"**Becomes a member of an approved society.**"—See s. 30 *supra;* the society cannot reject him on account of age alone, the loss so caused being made up by the reserve values provided for in s. 55 *infra.* It appears that a deposit contributor is entitled to a reserve value, although it remains in suspense unless and until he joins an approved society; see notes to s. 55 (1) and (2) *infra.*

"**Transferred to the society.**"—Cf. s. 31 *supra.*

"**Amount standing to his credit.**"—*i.e.*, the actual amount paid by or in respect of him, less the actual amount expended on his benefits.

Provided that—

(*a*) if that amount exceeds the value of the contributions paid by or in respect of him estimated on the assumption that he had been a member of an approved society since his entry into insurance, the excess shall not be transferred to the society but shall be carried to the credit of the Post Office fund;

"**The value of the contributions.**"—The amount of the contributions would be the same as if he had always been a member of an approved society: the value of them appears to be such sum as together with his reserve value [s. 55 (1) *infra*] will be equal to the transfer value which he would have if he were a member of an approved society [s. 31 (1) *supra*], so that the society will suffer no loss by accepting him; but there will be cases when transfer value is less than reserve value [see s. 31 (1)], and it is not clear what meaning is in such a case to be attached to these words.

"**The Post Office Fund.**"—See note to s. 42 (*a*) *supra* as to the disposal of such sums.

(*b*) if that amount is less than such value, the insured person shall be treated as being in arrear to the amount of the deficiency.

"**In arrear.**"—See s. 10, but the machinery of that section will doubtless be applied to such a case by regulations to be made under s. 10 (7). Presumably the whole amount of such arrears will be treated as having accrued at the date of transfer, for the purposes of repayment [s. 10 (5)]; but for the purposes of calculating reduction of benefits [s. 10 (1) and (2)] they will be averaged over the whole time that he has been insured, whether as a "deposit contributor" or a member of an "approved society." It will be difficult to give to such a person the benefit of the exemptions in s. 10 (4) as regards the period when he was a "deposit contributor."

S. 44 (1) *Provisions as to Special Classes of Insured Persons.*

Special provisions with respect to married women.

44.—(1) Where a woman who has before marriage been an insured person marries, she shall be suspended from receiving the ordinary benefits under this Part of this Act until the death of her husband, and, if she is a member of an approved society, one-third of her transfer value shall be carried to a separate account called the married women's suspense account, but, if at any time after the death of her husband she becomes an employed contributor, the period between her marriage and the expiration of one month from the death of her husband shall be disregarded for the purpose of reckoning arrears, and there shall be transferred from the married women's suspense account to the society of which she is a member the proper reserve value calculated according to tables to be prepared by the Insurance Commissioners:

"**Suspended.**"—Otherwise, although she might in fact cease to be employed, she would, if a member of an approved society, certainly until the expiration of twelve months (s. 79 *infra*), and possibly until her arrears amounted to twenty-six weeks a year on the average, or if a deposit contributor until the end of the year after her credit was exhausted, be entitled to one or more of the ordinary benefits. A woman who, not being married, gives up her employment to go and live with a man as his wife, will in fact be in this position. Note that suspension from benefits is not to deprive a member of an approved society of her membership for the purposes of this Part of this Act (s. 79 *infra*).

"**The ordinary benefits.**"—See s. 8 (1) *supra*; this includes maternity benefit [*ib.* (*c*)], though not, of course, such benefit in respect of her husband if he is insured.

"**Transfer value.**"—To be calculated in such manner as the Insurance Commissioners may prescribe [subs. (10) *infra*], and not necessarily in the manner stated in s. 31 (1) *supra*.

"**Separate account.**"—It apparently follows from this subs. and subs. (9) *infra* that this is to be an account in the National Health Insurance Fund, separate from that of any approved society: but no such account is mentioned in s. 54 *infra*. The whole of the sums standing in this account will be available for investment within the

meaning of s. 54 (3), and a question arises as to the mode of calculating interest upon it. Probably the account will be dealt with in the same manner as the Post Office and Navy and Army Insurance Funds [s. 54 (4)]. S. 44 (1) —

"**Employed Contributor.**"—S. 1 (2) and the First Schedule, *supra*.

"**Arrears.**"—S. 10 *supra*.

"**Transferred . . . to the society.**"—This shows clearly that, in spite of the omission in s. 54 *infra*, it is not intended that each society shall have its own married women's suspense account.

"**Proper reserve value . . . Insurance Commissioners.**"—Cf. s. 55 (1). If "reserve value" is to have the same meaning here as it has there (and it is difficult to assign to it any other) the difference between the case of such a woman and the ordinary case of a person entering into insurance for the first time at the same age, can only depend upon differences in the average expectation of sickness. See Appendix I. 13 (*e*).

Provided that where a woman who has been employed within the meaning of this Part of this Act before marriage, proves that she continues to be so employed after marriage, she shall not be so suspended so long as she continues to be so employed, and that, where a married woman so suspended from the ordinary benefits becomes employed within the meaning of this Part of this Act before the death of her husband, contributions shall thereupon again become payable in respect of her, and she shall cease to be suspended from receiving the ordinary benefits, but, subject to regulations made by the Insurance Commissioners, she shall, for the purposes of those benefits, be treated as if she had not previously been an insured person.

"**Proves that she continues . . . so long as she continues.**"—Cf. the first note to this subs. Such a woman must in the first instance prove that she continues to be employed, but having once done so she will probably be entitled to take advantage of s. 79 *infra*, and continue to postpone her suspension from benefit until twelve months after she ceases to be actually employed; otherwise the fact of leaving work for the purpose of a confinement would deprive her of the right to maternity benefit.

"**As if she had not previously been an insured person,**"—*i.e.*, if over seventeen, she will be required either to pay herself the difference between the voluntary and the employed rate, or the capital

S. 44 (1) value of that difference, or she will be entitled to sickness benefit reduced in accordance with tables to be prepared by the Insurance Commissioners [s. 9 (4) *supra*]. But if at any subsequent time she would be entitled to a higher rate if she had been treated as being in arrear from the age of seventeen or from the expiration of one year after the commencement of the Act, she may elect to be so treated (*ib*). See Appendix I, (2) (*a*).

(2) Where a married woman being a member of an approved society is so suspended from the ordinary benefits as aforesaid, she may, if she so elects within one month after such suspension, or, subject to the consent of the society, after the expiration of that month, and notwithstanding that she is not engaged in any regular occupation, become whilst so suspended a voluntary contributor, subject to the following modifications, but not otherwise :—

"**Not engaged in any regular occupation**"—This would not disqualify an ordinary voluntary contributor [s. 1 (3) *supra*] if she had been insured for five years ; a married woman nevertheless cannot become, or continue to be, an ordinary voluntary contributor even if she possesses both the qualifications mentioned in s. 1 (3). See subs. (7) *infra*.

(*a*) The rate of contributions payable by her shall be threepence a week ;

The rate, unlike that of the ordinary voluntary contributor [s. 5 (1) *supra*] will not vary with her age. It follows from s. 3 *supra* that Parliament will contribute one fourth of the cost of her benefits (equivalent to 1d. a week) ; for, although the benefits conferred by this subs. are not the same as those mentioned in s. 8 (1), they are of the same kind, and are included in Part I of the Fourth Schedule, which is by s. 8 (2) incorporated with "the benefits conferred by this Part of this Act."

(*b*) The benefits to which she shall be entitled shall be—

(i) medical benefit ; and

(ii) sickness benefit and disablement benefit at the rates and subject to the conditions specified in Table D of Part I of the Fourth Schedule to this Act ;

"**Medical benefit.**"—See ss. 8 (1) (*a*), (6) and 15 *supra*.

TABLE D.—*Rates and Conditions for Married Women.* S. 44 (2) (*b*)

Sickness benefit: during the first thirteen weeks, the sum of 5*s*. a week; during the second thirteen weeks, 3*s*. a week.

Disablement benefit: the sum of 3*s*. a week.

Sickness benefit and disablement benefit shall not be payable during the two weeks before and four weeks after confinement, except in respect of a disease or disablement neither directly nor indirectly connected with childbirth.

"**Sickness benefit.**"—Beginning, as in other cases, from the fourth day of the illness [s. 8 (1) (*a*) *supra*].

"**Sickness and disablement benefit . . . after confinement.**"—A married woman may or may not be entitled to maternity benefit in respect of her husband [s. 8 (1) (*e*)]. She can only be entitled to it on her own account if she remains employed after marriage [subs. (1) *supra*].

(*c*) No part of her contributions shall be retained by the Insurance Commissioners for the purpose of discharging their liabilities to approved societies in respect of the reserve values created under this Act:

"**Retained.**"—See s. 55 (3) *infra*. Such a woman has a considerable advantage in this respect, for a reserve value may have been credited to her at entry; and in any case, a man, or an unmarried woman, would be liable to this deduction; moreover, a woman in this position has the two-thirds of her transfer value which was not carried to the "suspense account" [subs. (1)] to assist her society in paying these benefits.

Provided that, where a married woman elects not to become such a voluntary contributor, she shall be entitled to have a sum equal to the remaining two-thirds of her transfer value applied in accordance with regulations of the Insurance Commissioners towards the payment of any of the benefits specified in Part III of the Fourth Schedule to this Act until the same is exhausted.

s. 44 (2) (c)

PART III

Benefits for Married Women who do not become Voluntary Contributors at reduced Rates.

Payment of the sum of 5*s.* a week on confinement during a period not exceeding four weeks on any one occasion.

Payments during any period of sickness or distress, subject to regulations made by the Insurance Commissioners and to the discretion of the society or committee administering the benefit.

"**The benefits.**"—It is much more doubtful whether these benefits will carry a Parliamentary grant than it was in the case of those conferred by subs. (2) (*b*) *supra*, because these benefits are different in kind as well as in degree from those mentioned in s. 8 (1), and Part III of the Fourth Schedule is not referred to in s. 8, which purports to give a list of the "benefits conferred by the Act" (s. 3).

"**On confinement.**"—This is probably intentionally vague, so that the four weeks may be immediately before or after, or partly before and partly after, the actual delivery (cf. s. 18 (1) *supra*).

"**Sickness or distress.**"—Again intentionally vague, so as probably to include sickness or distress in the family generally.

except that, where a reserve value was credited to the society in respect of such woman at the date of her entrance into insurance, so much of such sum as aforesaid as may be prescribed shall not be so applied but shall be written off the amount of the reserve values credited to the society.

"**Where a reserve value was credited.**"—See s. 55 (2).

"**Written off.**"—See s. 55 (4).

(3) Where the husband of a married woman who has been so suspended from ordinary benefits as aforesaid and who is a member of an approved society dies, she may, if she is qualified to become a voluntary contributor, and elects to do so within one month after the death of her husband, become an ordinary voluntary contributor paying contributions at the rate which would have been applicable to the case had she become such a contributor at the date of her entry into insurance:

Provided that she may, whether or not so qualified, if she so elects within one month after the death of her husband, continue to be or become a voluntary contributor on the same terms and subject to the same conditions as above provided as respects married women. S. 44 (3)

In either such case there shall be transferred from the married women's suspense account to the society the proper reserve value calculated as aforesaid.

"**Qualified to become a voluntary contributor.**"—S. 1 (3) *supra*.

"**Elects within one month.**"—If she is late with her election, her society apparently cannot extend the period, as they can under subs. (2), and then she can only become an ordinary voluntary contributor at the rate appropriate to her age at the time [s. 5 (1)], unless she becomes employed [subs. (1)].

"**The rate.**"—S. 5 (1) *supra*.

(4) Where a married woman who was at the date of her marriage a deposit contributor is by virtue of this section suspended from the ordinary benefits under this Part of this Act, two-thirds of the sum standing to her credit in the Post Office fund shall be applied in accordance with the regulations of the Insurance Commissioners towards the payment of any of the benefits specified in Part III of the Fourth Schedule to this Act until the same is exhausted.

"**Deposit contributor.**"—S. 42 *supra*.

"**Two-thirds of the sum.**"—The remaining third being held in suspense in case she should become a widow, in the same way as the transfer value of a member of an approved society. Should she predecease her husband, it can be dealt with in accordance with s. 42 (*f*).

"**Part III. of the Fourth Schedule.**"—See under subs. (2) *supra*; a deposit contributor who does not remain or become employed will not be entitled to continue her contributions after marriage.

S. 44 (5) (5) Where a woman who was a married woman at the commencement of this Act at any time subsequently either before or within one year after the death of her husband becomes an employed contributor and a member of an approved society, she shall be entitled to full benefits, notwithstanding that at the time of so becoming she is of the age of seventeen or upwards.

"**At any time subsequently.**" If she is at the commencement of the Act employed she will, of course, be entitled like anyone else to her full reserve value [s. 55 (1) *infra*]; it is only if she became employed more than one year after that date that she would, but for this provision, be penalised under s. 9 (4). If she becomes employed for the first time more than one year after his death, she will apparently be subject to the full penalties of that subsection.

(6) Where any arrears of contributions have accrued due in respect of a married woman during coverture such arrears shall, on the death of her husband, be disregarded and she shall be thenceforth entitled to benefits as if such arrears had never accrued due.

This covers the case of a woman who is not suspended from benefits during marriage under sub. (1) *supra*.

(7) Except as provided by this section, a married woman shall not be entitled to become a voluntary contributor, and, if a woman is before marriage a voluntary contributor, she shall on marriage not be entitled to continue to be such a contributor.

She cannot remain or become an ordinary voluntary contributor, although she may continue to be mainly dependent for her livelihood upon some occupation carried on apart from her husband [see s. 1 (3) (*a*) *supra*].

(8) If a woman, whilst a voluntary contributor at such reduced rates of benefit as are provided by this section, becomes employed within the meaning of this Part of this Act, she shall be entitled to a

certificate (to be granted in manner hereinbefore provided) exempting her from liability to become an employed contributor so, however, that such exemption shall not exempt the employer from his liability to pay contributions in respect of her, or deprive him of his right to recover such part of those contributions as is payable on her behalf, but of each weekly contribution so paid by the employer threepence shall be treated as her contribution as a voluntary contributor and the balance shall be applied for her benefit in such manner as the society may determine. S. 44 (8)

"**Reduced Rates.**"—Subs. (2).

"**Certificate . . . hereinbefore provided.**"—See s. 2 (2) *supra*.

"**Shall not exempt the employer.**"—Cf. s. 4 (4) *supra*, under which the employer is, however, only bound (and entitled) to pay his own share of the contribution, in respect of the holder of a certificate, and not to make any deduction. Here he is to pay the full rate and make the deduction as if there were no certificate. Such certificates are likely to be demanded in the case of a woman who becomes employed after marriage, but before her husband's death, and would if an employed contributor be subject to reduction of benefits [see the proviso to subs. (1) *supra*].

"**Applied for her benefit.**"—But apparently will carry no State grant (s. 3 *supra*), and see notes to subs. (2), and cf. s. 6 (2) *supra*.

(9) If at any time the married women's suspense account is insufficient to meet the liabilities imposed on it by this section, the deficiency shall be made good out of the sums retained by the Insurance Commissioners for discharging their liabilities in respect of the reserve values created by this Act.

"**Married women's suspense account.**"—See notes to subs. (1) *supra*.

"**Sums retained by the Insurance Commissioners.**"—See s. 55 (3) *infra*. The effect will be, in the event of a permanent deficiency in this account being disclosed, to leave always a small portion of the reserve values not written off under s. 55 (4), and by that amount to limit the sums which will be available for extension of benefits under s. 8 (9) *supra*.

S. 44 (10) (10) Transfer value for the purposes of this section shall be calculated in such manner as the Insurance Commissioners may prescribe.

Cf. s. 31 *supra*, and Appendix I. 10 (*b*).

(11) Where a woman is a member of an approved society at the time when she is entitled to exercise an option under this section, it shall be the duty of the society to give her full information as to the nature of her rights.

"**An option.**"—See subss. (2), (3) and possibly also (8), as compared with the proviso to (1) *supra*.

"**Full information.**"—It is doubtful whether it would be sufficient to include this in the rules which she receives on joining; probably it is intended that her attention shall be specifically called to the matter at the time.

(12) Where a deficiency has been found in respect of the society or branch of which a woman is a member at a valuation previous to the time when she became suspended from ordinary benefits under this Part of this Act, and that deficiency has not been made good at the time of her marriage, or where a woman is in arrears at that time, such adjustments in the sums transferred to the married women's suspense account, and in the balance of her transfer value, and in the rates of benefit to which she is entitled under this section, shall be made as the Insurance Commissioners may prescribe.

"**Deficiency.**"—S. 38 *supra*.

"**Arrears.**"—S. 10 *supra*.

"**The sums transferred.**"—But not, apparently, in the "proper reserve value" to be credited to the society in respect of her on widowhood [subss. (1) and (3)]. See Appendix I. 10 (*c*).

(13) Save as aforesaid, the provisions of this Part of this Act shall apply to a woman who has been

married, both during and after coverture, in like manner as if she had never been married. S. 44 (13)

(14) This section shall apply in the case of a woman whose marriage has been dissolved or annulled, or who has, for a period of not less than two years, been actually separated from or deserted by her husband, as if her husband had died at the date at which such dissolution or annulment took effect, or, as the case may require, at the expiration of such period of two years.

Special provisions as to aliens.

45.—(1) This Part of this Act shall apply to persons of the age of seventeen or upwards at the date of entry into insurance who are not British subjects, subject to the following modifications:—

"**Of the age of seventeen or upwards.**"—This does not mean that it is not to apply at all to aliens under that age, but that it is to apply without the modifications of this section.

"**Not British subjects.**"—See note to s. 1 (2) *supra*; such a person can only be liable to contributions [the First Schedule, Part I, under s. 1 (2)], or entitled to benefits [s. 8 (4)], as long as he remains in the United Kingdom (or British Islands, for certain purposes), but he may become entitled to take his transfer value [ss. 31, 32, 42 (*g*)] abroad with him.

(*a*) No such person shall be qualified to become a member of an approved society for the purposes of this Part of this Act except upon the terms and subject to the conditions hereinafter mentioned;

"**Qualified to become a member.**"—See s. 30 *supra*.

(*b*) No part of the benefits to which such persons may become entitled shall be paid out of moneys provided by Parliament;

See s. 3 *supra*, but note that in the case of persons earning low wages, this will not prevent part of their contributions being paid by the State under s. 4 (1), and the Second Schedule *supra*; the same applies to persons over 65 years of age [s. 49 (2) *infra*].

S. 45 (1) (c)

(c) The rate of sickness, disablement, and maternity benefit shall, as respects a deposit contributor, be reduced, in the case of men, to seven-ninths, or in the case of women to three-quarters, of the rate to which they would otherwise be entitled under this Part of this Act :

i.e., they will only be entitled to that part of the ordinary benefits which is paid for by themselves and their employers.

(d) No part of the sums payable in respect of such persons for medical benefit and sanatorium benefit or towards the expenses of administration of benefits shall, in the case of such persons, be paid out of moneys provided by Parliament.

(2) Where such a person becomes a member of an approved society the following provisions shall have effect :—

(i) The contributions payable by or in respect of such person shall be credited to the society ;

(ii) The society shall in each year pay to the Insurance Committee the whole of the sums payable in respect of such person for medical benefit and sanatorium benefit ;

"**The whole.**"—The rate of these benefits obviously cannot be reduced in the same way as that of those mentioned in subs. (1) (c), but since Parliament is not to contribute to the cost of them the charge upon the society in respect of them will be greater by two-sevenths for a man, one-third for a woman, than in the case of a British subject. Therefore the society will not be able to pay even seven-ninths (or three-quarters) of the ordinary rate of sickness, disablement, and maternity benefits.

(iii) The rate and conditions of sickness benefit, and disablement benefit, and maternity

benefit shall be such as may be determined by the society; S. 45 (2) (iii) —

See the last note for the reason why the society cannot pay the rates mentioned in subs. (1) (*c*); an alien deposit contributor will draw those rates, but will exhaust his credit sooner than a British subject.

(iv) Such person shall not be deemed to have joined an approved society for the purposes of the provisions of this Part of this Act relating to reserve values, and no part of the contributions of such person shall be retained by the Insurance Commissioners towards the discharge of their liabilities in respect of reserve values.

"**Reserve values.**"—s. 55 (2) *infra*.

"**Retained.**"—s. 55 (3) *infra*. This will increase the rate of benefit payable to a young alien, but still further decrease that payable to an old one.

(3) A woman who, having been a British subject before marriage, has ceased to be a British subject by reason of marriage with a person not being a British subject, shall not be subject to the provisions of this section if her husband is dead, or the marriage has been dissolved or annulled, or she has for a period of not less than two years been actually separated from or deserted by her husband.

"**British subject.**"—See notes to s. 1 (2) *supra* and compare the last section. Such a woman will still be liable to the reduction provided by this section during coverture.

(4) This section shall not apply to any person who, on the fourth day of May nineteen hundred and eleven, was a member of a society which, or a separate section of which, becomes an approved society, and had then been resident in the United Kingdom for five years or upwards, or to any

S. 45 (4) person who is transferred to an approved society or the Post Office fund in pursuance of an arrangement with the Government of any foreign State.

"**Becomes an approved society.**"—s. 23 *supra*.

"**Resident.**"—See notes to the First Schedule, Part I (*b*), under s. 1 (2) and to s. 8 (4) *supra*.

"**Transferred . . . any foreign State.**"—s. 32 *supra*.

Special provisions with regard to persons in the naval and military service of the Crown.

46.—(1) For the purpose of providing seamen, marines, and soldiers with such benefits during their term of service and after their return to civil life as are hereinafter in this section mentioned, there shall be deducted from the pay of every seaman and marine within the meaning of the Naval and Marine Pay and Pensions Act, 1865, and of every soldier of the regular forces (other than soldiers of His Majesty's Indian Forces, the Royal Malta Artillery, and native soldiers of any regiment raised outside the United Kingdom), the sum of one penny halfpenny a week, and there shall be contributed by the Admiralty and the Army Council respectively, out of moneys provided by Parliament for navy and army services, in respect of every such seaman, marine, and soldier who has joined an approved society in the manner hereafter mentioned, the sum of one penny halfpenny per week, and, in respect of every other such seaman, marine, and soldier such sum per week as may be prescribed :

Provided that no such deduction shall be made from the pay of a seaman, marine, or soldier who has completed the period of his first engagement and has re-engaged for pension unless he so elects within the prescribed time, and that no contribution shall be made by the Admiralty or Army Council in respect

of any week in respect of which such a deduction is not made. S. 46 (1)

"**There shall be deducted.**"—As to deductions from pay in the Navy and Army generally see the Naval Discipline Act, 1866, and the Army Act, 1881, ss. 136–140.

"**Seaman and marine.**"—"The term 'seaman and marine' means a petty officer or seaman, non-commissioned officer of marines, or marine, or other person forming part in any capacity of the complement of any of Her Majesty's vessels, or otherwise belonging to Her Majesty's naval or marine forces (not being an officer within the meaning of this Act—*i.e.* a commissioned, warrant or subordinate officer or assistant engineer)."—Naval and Marine Pay and Pensions Act, 1865 (28 and 29 Vict. c. 73, s. 1).

"**Soldier.**"—In the Army Act "the expression 'soldier' does not include an officer as defined by this Act (*i.e.* a commissioned officer), but . . . does include a warrant officer not having an honorary commission and a non-commissioned officer and every person subject to military law during the time that he is so subject" [44 and 45 Vict. c. 58, s. 190 (6)].

"**Regular forces.**"—In the Army Act, "the expression 'regular forces,' 'Her Majesty's Regular Forces,' means officers and soldiers who by their commissions, terms of enlistment or otherwise are liable to render continuously for a term, military service to Her Majesty in any part of the world . . . and subject to this qualification that when the reserve forces are subject to military law such forces become during the period of their being so subject part of the regular forces."—44 and 45 Vict. c. 58, s. 190 (8).

For the purposes of this section the Army Reserve when called out on permanent service and the Territorial Force when embodied are a part of the Regular Forces [subs. (7)] *q.v.*

"**Who has joined an approved society.**"—In the case of those who have not joined an approved society the contributions of the Admiralty and Army Council are unlimited, since they have to guarantee the solvency of the fund [subs. (3) (*c*).]

"**In the manner hereafter mentioned.**"—See subs. (2) (*a*), (*b*).

"**One penny halfpenny per week.**"—The true contribution of the employers in respect of a soldier, marine, or seaman is not $1\frac{1}{2}d.$, but $2\frac{1}{18}d.$; since a further $\frac{5}{9}d.$ is contributed in respect of them to the reserve fund [subs. (2) (iv.)] out of the Navy and Army Insurance Fund, which is guaranteed by the Admiralty and Army Council.

"**As may be prescribed.**"—*I.e.* by the Insurance Commissioners under s. 65. See however subs. (3) (*c*) and note thereto, and Appendix I. 15 (*f*).

"**Re-engaged for pension.**"—This paragraph confers upon men who have re-engaged for pension, unless they elect to be included, a right to exemption similar to that which is given by s. 2 (1) (*a*), if they claim it, to those who have already obtained pensions. A man serving for pension at the commencement of the Act has, however, the right to contribute and to have a reserve value credited

S. 46 (1) in respect of him if he so elects [see subs. (3) (*e*) hereof]; and whether he contributes or no he is entitled to full benefits out of the Navy and Army Insurance Fund if discharged in a precarious state of health, whether with or without a pension. See pars. (3) (*e*), (*h*) hereof.

(2) A seaman, marine, or soldier—

(*a*) who was at the date of his entry or enlistment an insured person and had joined and was at that date a member of an approved society; or

(*b*) who within six months from the date of his entry or enlistment, or, in the case of a seaman, marine, or soldier serving at the commencement of this Act, within six months after the commencement of this Act, or within such longer period as may be prescribed, joins an approved society for the purposes of this Part of this Act;

shall, for the purposes of this Part of this Act, be treated as if he were an employed contributor, subject, until his discharge, to the following modifications:—

(i) The employed rate shall be three pence, and the deductions made from his pay and the contributions made in respect of him by the Admiralty or Army Council shall be treated as the contributions paid in respect of him;

(ii) He shall not be entitled to medical benefit, sanatorium benefit, sickness benefit, or disablement benefit;

(iii) Maternity benefit shall be payable, notwithstanding that both he and his wife are resident outside the United Kingdom at

the date of the confinement, and the society may arrange with the Admiralty or Army Council for the administration of the benefit through the Admiralty or Army Council ; S. 46 (2) (iii)

(iv) The sum to be retained out of each weekly contribution by the Insurance Commissioners towards the discharge of their liabilities in respect of reserve values shall be one penny, and the remaining five-ninths of a penny shall be paid out of the Navy and Army Insurance Fund hereinafter constituted.

An insured person who falls within this section will be entitled to maternity benefit extended as provided in par. (iii) above, and may be entitled to additional benefits paid out of the surplus of the society, but will receive no other of the ordinary benefits.

As to the financial position of the society under this section, see Chap. VI, *supra*.

(3) With respect to seamen, marines, and soldiers who have not joined an approved society as aforesaid, the following provisions shall have effect :—

(*a*) The sums so deducted and the contributions so made as aforesaid in respect of such men shall be paid into the National Health Insurance Fund, and out of such sums there shall be retained by the Insurance Commissioners towards discharging their liabilities in respect of the reserve values created under this Part of this Act the like amount as if such men were members of approved societies, and the balance shall be credited to a special fund to be called the Navy and Army Insurance Fund :

S. 46 (3) (a) —

"**Who have not joined an approved society.**"—A member of an approved society cannot transfer to the Navy and Army Insurance Fund.

"**Navy and Army Insurance Fund.**"—It is noteworthy that the Act contains no provision whatever for the general control and management of the Navy and Army Insurance Fund, though provision is made for the administration of benefits out of the Fund, either by the Naval or Military authorities or by the Insurance Committees. See paragraphs (*f*) and (*h*) hereof.

(*b*) There shall also be paid into the Navy and Army Insurance Fund in each year out of moneys provided by Parliament a sum equal to two-ninths of the amount, calculated in the prescribed manner, which would have been payable in that year in respect of medical, sanatorium, sickness, and disablement benefits (including expenses of administration) had all seamen, marines, and soldiers from whose pay deductions are made under this section been members of approved societies and entitled to such benefits as employed contributors:

"**Two-ninths of the amount calculated in the prescribed manner.**"—The apparent intention of this section is to give the same State subsidy for the insurance of men in the armed services as for that of civilians. Nothing, however, is indicated as to the basis of the calculations, and it is clear that there are at least two diverse principles on which the calculations can be based. Either the actual sickness experience of the Navy and Army in each year can be made the basis of contribution, or it can be assumed that had the members of the fund been employed contributors they would have been subject to the usual sickness experience of employed contributors at corresponding ages. The latter assumption has apparently been made by the actuaries engaged in investigating the probable working of this section. See also Appendix I. 15 (*g*).

"**As employed contributors.**"—See the note above.

(*c*) The weekly contributions to be made by the Admiralty and Army Council in respect of such men shall be such as may from

time to time be required to keep the Navy and Army Insurance Fund solvent: S. 46 (3) (c)

This paragraph is apparently directory for the purpose of enabling the Insurance Commissioners to prescribe the rates of contribution as required by subsection (1) of this section. It is clear that these rates must be prescribed in advance from time to time, since the duty of the Admiralty and the Army Council is to contribute "such sum per week as may be prescribed" [subs. (1)].

(*d*) If any such man was at the date of his entry or enlistment a deposit contributor, he shall, for the purpose of dealings with the sum standing to his credit in the Post Office fund, be treated as if the Navy and Army Insurance Fund had been an approved society, and he had at the date of his entry or enlistment become a member of that society:

"**The sum standing to his credit.**"—The sum carried by a Post Office contributor on enlistment to the credit of the Navy and Army Insurance Fund will be his whole credit in the Post Office Fund or the value of his contributions, as if he had joined an approved society at entry, whichever may be the less [s. 43 (2)]. It is, however, clear that the provision as to arrears [s. 43 (2) (*b*)] does not in this case apply, since the insured person is absolutely entitled under paragraph (*f*) hereof to maternity benefit, and s. 10, which deals with reduction of benefits to persons in arrear, applies only to members of approved societies.

(*e*) In the case of a seaman, marine, or soldier serving at the commencement of this Act, there shall be credited to the Navy and Army Insurance Fund such reserve value as would have been credited to an approved society had he at that date become a member of the society as an employed contributor: Provided that no such reserve value shall be credited to that fund if at the date aforesaid he had completed the period of his first engage-

S. 46 (3) (e)

ment and had re-engaged for pension, unless he elects to have deductions made from his pay, or unless, not having so elected, he becomes on discharge entitled to benefits payable out of that fund as hereinafter mentioned :

"**Unless he elects,**" *i.e.*, within the prescribed time [subs. (1) hereof].

"**Becomes on discharge entitled to benefits,**" *i.e.*, under paragraph (*h*) hereof.

(*f*) Every such man shall, until discharged, be entitled to maternity benefit payable out of the Navy and Army Insurance Fund, and shall be entitled to such benefit notwithstanding that both he and his wife are at the date of the confinement resident outside the United Kingdom, and the benefit shall be administered by the Admiralty and Army Council either directly or through Insurance Committees :

The right to maternity benefit is absolute and is not affected by arrears. S. 10 has no application to this case.

(*g*) On the discharge of a seaman, marine, or soldier, from whose pay deductions have been made and continue to be made up to the date of his discharge, there shall be debited to the Navy and Army Insurance Fund, and, if he becomes a member of an approved society within the prescribed time from his discharge there shall be credited to that society, or, if he does not become a member of such a society within the prescribed time

from his discharge, there shall, unless he becomes entitled to benefits out of the Navy and Army Insurance Fund as hereinafter mentioned, be carried to his credit in the Post Office fund the transfer value which would have been payable in respect of him had he been a member of an approved society throughout his period of service, or in the case of a man serving at the date of the commencement of this Act, since that date, and, if he becomes a deposit contributor, so much of the reserve value, if any, credited to the Navy and Army Insurance Fund in respect of him shall be cancelled as would have been cancelled had he been transferred from an approved society to the Post Office fund: S. 46 (3) (g)

This paragraph puts the Navy and Army Insurance Fund in exactly the same position as an approved society as to transfers to the Post Office [s. 43 (1)], or to approved societies, from the fund (s. 31); it is in fact the complement of paragraph (*d*). No provision whatever is made for transfer from approved societies to the Fund as such a transfer is not possible under the Act. See also proviso (iv) to paragraph (*h*).

(*h*) A man discharged from service as a seaman, marine, or soldier who proves that the state of his health is such that he cannot obtain admission to an approved society may, if he so elects, on making application to the Insurance Commissioners in the prescribed manner within three months of his discharge, or such longer time as may be prescribed, become, subject to regulations made by the

S. 46 (3) (*h*)

Insurance Commissioners after consultation with the Admiralty and Army Council, entitled to benefits (other than additional benefits) provided under this Part of this Act at the full rate, the cost of which benefits shall be payable out of the Navy and Army Insurance Fund, and such benefits shall be administered by Insurance Committees or otherwise in such manner as may be prescribed by such regulations as aforesaid, and any contributions paid under this Part of this Act by or in respect of him shall be paid into that fund:

"**A man discharged.**"—The words include every man whether he has been a contributor or has re-engaged for a pension [see proviso (i) below]; "discharged" includes transferred to Reserve [subs. (5)].

"**Admission to an approved society.**"—*Quære* as to the effect of these words. It is clearly not the intention of the paragraph that the man should have to seek admission to every approved society, the word used being "an" and not "any"; and it is submitted that rejection on medical grounds by any one society will be evidence on which to found a claim.

"**Other than additional benefits.**"—Since the employers' contributions are to be sufficient only to keep the Navy and Army Insurance Fund solvent there can be no surplus for additional benefits. It is clear, too, that by virtue of this paragraph the sickness experience under that fund will be very large.

"**Any contributions,**" *i.e.*, in respect of civil employment after leaving the Army or Navy.

Provided that—

(i) no deductions from benefits shall be made on account of any pension to which a man may be entitled;

(ii) the rate of sickness benefit shall be reduced, in the case of a man who entered into insurance

when of the age of seventeen or upwards or who is in arrears, to the like extent as it would be reduced had he been an employed contributor and a member of an approved society who entered into insurance at the like age or who is in arrears to the like extent, so however that the rate of sickness benefit shall in no case be reduced below five shillings a week ; S. 46 (3) (*h*) (ii) —

"**Benefit shall be reduced.**"—See ss. 9 (4), 10 (2), and the Fifth Schedule.

(iii) there shall in each year be repaid to the Navy and Army Insurance Fund, out of moneys provided by Parliament, a sum equal to two-ninths of the amount expended out of the fund on such benefits as aforesaid, including the expenses of administration ;

"**Two-ninths.**"—The combined effect of this paragraph and of paragraph (*b*) above is that the Navy and Army Insurance Fund gets more than its fair share of the Parliamentary grant, two-ninths being in some cases superimposed.

(iv) if a man who is so entitled to benefits payable out of the Navy and Army Insurance Fund at any time becomes a member of an approved society for the purposes of this Part of this Act, he shall cease to be entitled to benefits payable out of that fund, and there shall be debited to that fund and credited to

S. 46 (3) (*h*) (iv)

such society the transfer value which would have been so debited and credited if he had been at that time transferred from one approved society to another approved society.

"**Transfer value.**"—Cf. par. (*g*) *supra*, and note thereto.

(4) In the application of this Part of this Act to a man who is or has been a seaman, marine, or soldier, and to whom this section applies—

(i) the date of his entry or enlistment as a seaman, marine, or soldier, or, if he was serving at the commencement of this Act, the date of that commencement, shall, unless he was an insured person at the date of his entry or enlistment, be treated as the date of his entry into insurance;

See, however, subs. (6).

(ii) deductions from pay, with the corresponding contributions made by the Admiralty and Army Council, shall be treated as payments of contributions at the employed rate for the purpose of reckoning the number of contributions made in respect of him, arrears, and transfer value, and for the purpose of qualifications for becoming a voluntary contributor;

"**Number of contributions.**"—See s. 8 (8).

"**Arrears.**"—See s. 10, and the Fifth Schedule.

"**Transfer value.**"—See s. 31 (1)

"**Becoming a voluntary contributor.**"—S. 1 (3) (*b*).

(iii) a seaman, marine, or soldier during his term of service shall, if he has joined an approved society as aforesaid before his entry or enlistment, be deemed to reside in that part of the United Kingdom in which he resided immediately before his entry or enlistment, or, if after his entry or enlistment, in the part of the United Kingdom in which the registered office or other principal place of business of the society or branch which he has joined is situate, and in any other case in England, and all persons entitled to benefits payable out of the Navy and Army Insurance Fund shall be deemed to reside in England. S. 46 (4) (iii) —

"**In any other case in England.**"—Every seaman, marine, or soldier in the Navy and Army Insurance Fund is therefore deemed to reside in England so that the English Reserve Fund gains by his $1\frac{5}{8}$d. under subs. (3) (*a*). See also s. 8 (4).

(5) Discharge shall, in the case of a seaman, marine, or soldier who on the completion of any term of service is transferred to a reserve, include such tranfer.

(6) This section shall not apply to a seaman, marine, or soldier who entered or enlisted before the age of sixteen until he attains that age, and on attaining that age shall apply to him as if he had entered or enlisted at the time when he attained that age.

(7) The foregoing provisions of this section shall, subject to such adaptations and modifications as may be prescribed, apply to men belonging to the Naval

S. 46 (7) Reserves when employed on service during war or any emergency, and to men of the Army Reserve when called out on permanent service, and to men of the Territorial Force when called out on embodiment, but, except as aforesaid, shall not apply to any such men.

(8) Where a man of the Naval Reserves, the Army Reserve, or the Territorial Force is being trained and is in receipt of pay out of the moneys provided by Parliament for Navy or Army services, he shall, for the purposes of this Part of this Act, be deemed, whilst so training, to be employed within the meaning of this Part of this Act and to be in the sole employment of the Crown. Provided that this subsection shall not apply to a man who was not immediately before the training an insured person, except in such cases and under such circumstances as may be specified in a special order made by the Insurance Commissioners.

Cf. First Schedule, Pt. II (*a*), s. 98, and Appendix I. 14 (*c*).

The Army Council must pay contributions under both parts of this Act for Reservists and Territorials during training.

Special provisions where employer liable to pay wages during sickness.

47.—(1) The Insurance Commissioners shall from time to time make special orders specifying any classes of employment in which a custom or practice is shown to their satisfaction to prevail according to which the persons employed receive full remuneration during periods of disease or disablement, or any part thereof, and, where the custom or practice is confined to certain localities, the order shall also specify the localities in which the custom prevails, and, subject to the provisions of this section, the order may contain such incidental, supplemental,

and consequential provisions as appear necessary for adapting the other provisions of this Part of this Act to cases under this section. S. 47 (1)

"**Special Orders.**"—See s. 113, the Ninth Schedule, and Appendix I. 14 (*i*).

"**Custom or practice.**"—In the legal application of the word a "custom" must be (*a*) reasonable, and (*b*) so universally adopted in any employment or locality that any persons entering into a contract to which it may apply must be taken to have known of it and to have intended to incorporate it into their contract. A custom of such a character may be proved by parol evidence for the purpose of varying or explaining a written contract. Such customs have in numerous cases been proved in the courts for the purpose of establishing the length of notice required for the dismissal of a servant or employée, *e.g.* :—

(*a*) A domestic or menial servant is hired by the year subject to a calendar month's notice on either side or a month's wages (*Fawcett* v. *Cash*, 5 B. & Ad. 904; *Turner* v. *Mason*, 14 M. & W. 112); but not board wages (*Gordon* v. *Potter*, 1 F. & F. 644). Menial servants include "those persons whose main duty it is to do actual bodily work as servants for the personal comfort, convenience, or luxury of the master, his family, and his guests, and who for this purpose become part of the master's residential or *quasi*-residential establishment"; (per Collins, J., in *Pearce* v. *Lansdowne*, 69 L.T.N.S. 317); *e.g.*, a head gardener living in a lodge (*Nowlan* v. *Ablett*, 2 C.M. & R. 54); a gardener and odd-job man (*Johnson* v. *Blenkensop*, 5 Jur. 870); and a huntsman (*Nicoll* v. *Greaves*, 17 C.B.N.S. 27)—are menials; but a governess is not (*Todd* v. *Kerrick*, 8 Ex. 151). An alleged custom whereby such an engagement may be terminated at the end of the first month by notice at the end of the first fortnight is not unreasonable, but will not be judicially recognised without proof in each case (*Moult* v. *Halliday*, 1898, 1 Q.B. 125).

(*b*) Members of a newspaper staff are customarily engaged for a year (*Baxter* v. *Nurse*, 1 C. & K. 10; *Holcroft* v. *Barber*, *ib.* 4).

(*c*) As to the customs regarding agricultural labourers see Cd. 2376 of 1905, and note to the Second Schedule under s. 4 (1) *supra*. They are not "menials" (*Lilley* v. *Elwin*, 11 Q.B. 742).

(*d*) Nor are clerks (*Beeston* v. *Collyer*, 4 Bing. 309; *Huttman* v. *Boulnois*, 2 C. & P. 510), but there appears to be no judicially recognised custom with regard to them.

(*e*) As to periods of notice of artisans, &c., see Labour Commission, 1892, Answers to Schedules of Questions, Group C, 6795.

There is no judicially recognised "custom" associated with any particular employment or locality with regard to payment of wages during sickness (though the existence of such a custom may always be proved by sufficient evidence), and the general law on the subject is not very easy to apply to industries in which the period of notice is short. A contract of service, being a personal contract, is terminated by any circumstance which makes performance totally impossible on either side, *e.g.*, by the death of the parties (*Hall* v. *Wright*, E.B. & E. 746, 793; *Robinson* v. *Davison*, L.R. 6 Ex. 269, 274; *Farrow* v. *Wilson*,

S. 47 (1) L.R. 4 C.P. 744 &c., &c.). In accordance with this principle it has been held that a contract of apprenticeship is terminated by the act of God, in the permanent illness of the apprentice (*Boast* v. *Firth*, L.R. 4 C.P., 1; see also *Taylor* v. *Caldwell*, 3 B. & S. 826). In *Robinson* v. *Davison* (*supra*) and *Poussard* v. *Spiers and Pond* (1 Q.B.D. 410), it was held that a temporary illness was also sufficient to terminate the contract; but those, being cases of theatrical or musical performances where the appearance of the particular performer on a day named was of the essence of the contract, can hardly govern ordinary contracts of service. On the other hand, in *Cuckson* v. *Stones* (28 L.J.Q.B. 25) and in *Storey* v. *Fulham Steel Works Co.* (24 T.L.R. 89), it was held that temporary illnesses do not terminate a contract, unless the illness puts an end in a business sense to the business engagement and frustrates the object of it (see *Jackson* v. *Union Marine Insurance Co.*, L.R. 10 C.P. at p. 155). But in those cases the contract was for a considerable term of years, and the illness extending over a period in the middle of the term, it was held that wages were recoverable for that period and until the end of the term. It remains open to question whether an illness which, though temporary, will clearly incapacitate the servant for the remainder of the term, or of the period of notice, if notice is given, entitles the employer to terminate the contract at once. Probably in the case of a menial servant or otherwise of a yearly hiring, an illness likely to last beyond the year would terminate the contract, but not one only likely to last beyond the month.

Apparently, however, it will not be necessary for the Insurance Commissioners, before making a special order under this section, to be satisfied of the existence of a custom in the strict legal sense defined above. The order will not be binding upon all employers, but merely gives them an option under subs. (2) *infra*. Probably the addition of the word "practice" here is intended to indicate this.

"**Full remuneration.**"—Inclusive of board, lodging or any other allowance to which the servant may be entitled during the service, or the value thereof. See notes to the First Schedule, Part II (*g*), under s. 1 (2), and Second Schedule under s. 4 (1) *supra*. If custom is to be given its strict legal meaning it would seem that menial servants are excluded, for it is open to the employer to dismiss the servant with a month's wages only (see the last note). For the modification of this provision in the case of persons employed by or under the Crown see s. 53 (2) *infra*.

"**Disease or disablement.**"—See ss. 79 *infra* and 8 (1) (*c*) *supra*.

(2) It shall be lawful for any employer who employs persons in any class of employment specified in any such order, within a locality (if the custom is confined to certain localities) so specified, to give to the Insurance Commissioners the prescribed notice, and thereupon the employer shall, as respects all such persons, be subject to the liabilities, and this Part of this Act shall apply in

respect of all such persons, subject to the modifications hereinafter mentioned. S. 47 (2)

"**It shall be lawful for any employer.**"—The employee has no option in the matter, except in cases under subs. (7) *infra*.

"**All such persons.**"—The employer must exercise the option entirely or not at all; he cannot pick and choose among his employees.

"**The liabilities.**"—See subss. (3) and (9) *infra*.

"**The modifications.**"—See subss. (4), (5), (6) *infra*.

(3) The employer shall be liable to pay full remuneration to every such person during any period or periods not exceeding six weeks in the aggregate in any one year during which such person may be suffering from any disease or disablement commencing while such person is in his employment, notwithstanding that such person may have left his employment before the expiration of that time:

"**Full remuneration.**"—See note to subs. (1) *supra*.

"**In any one year.**"—*i.e.*, calendar year. If any part of the illness is after the end of the calendar year, and after the employment has ceased, the employer will not be liable for that part, although he may not have paid for six weeks during the year. If the employment continues over the new year, he will be liable for another additional six weeks.

"**Disease and disablement.**"—See ss. 8 (1) (*c*), 79, and notes. It will be necessary that the disease or disablement should wholly incapacitate the employee from work, as in the former section. This point may be important where an employer claims immunity on the ground that the six weeks are already exhausted.

Provided that, if any such person is engaged for a term of not less than six months certain, the employer shall be liable to pay full remuneration during any period of disease or disablement lasting less than six weeks, and for the first six weeks of any period of disease or disablement lasting more than six weeks, notwithstanding that the aggregate

S. 47 (3) exceeds six weeks, but, where any such period extends beyond the term of the engagement, the employer shall not be liable to make any payment in respect of any part thereof after the expiration of such term.

"**Any period.**"—The effect is that the employer's liability ceases with the employment, but may be unlimited within the period of employment, provided he shall not be liable for more than six weeks continuously; s. 8 (5) *supra* is clearly not intended to apply to such a case, but difficulties may well arise as to whether a "period of disease" is continuous, or whether a new period has begun.

(4) This Part of this Act shall apply in respect of persons so employed as aforesaid, subject to the following modifications:—

(*a*) Sickness benefit shall not be payable in respect of any period during which full remuneration is payable by the employer under this section, but for the purpose of calculating the rate and duration thereof, shall be deemed to have been paid for six weeks before the date as from which it becomes actually payable:

"**Sickness benefit.**"—See s. 8 (1) (*a*).

"**Shall be deemed to have been paid for six weeks.**"—Sickness benefit may become payable after a period of full remuneration actually less than six weeks. (*a*) under the first paragraph of subs. (3) *supra*, if the last of two or more discontinuous periods of sickness brings the total up to six weeks in the calendar year [in which case the periods would have counted as one for the purpose of sickness benefit, s. 8 (5)]; (*b*) under the same paragraph, if both the calendar year and the employment come to an end before six weeks have elapsed; (*c*) under the proviso to subs. (3), if the employment comes to an end before the six weeks. The calculation must be made by ascertaining, independently of this section, the rate and duration of sickness benefit which would have been payable, and then assuming that sickness benefit has been paid for six weeks, and that it then dated from the fourth day of illness [s. 8 (1) (*c*)]. In fact the "full remuneration" will have dated from the first day, and the net effect of this arrangement is that the full rate of sickness benefit comes to an end three days earlier than it otherwise would have done, *i.e.*, the insured person loses the three days at the end, instead of at the beginning, of his illness.

This provision is also important from the point of view of the finances of approved societies [see (*d*) *infra* and "reserve value" (s. 55)], in that it enables the full value to be credited to a society as though it had been liable to pay the benefit for the whole time. S. 47 (4) (*a*) —

(*b*) The employed rate shall be reduced by twopence (or, where the employed contributor is a woman, one penny half-penny):

"**The employed rate.**"—See s. 4 (1) and the Second Schedule *supra*.

(*c*) The weekly contributions payable by the employer shall be reduced by one penny (or, where the employed contributor is a woman, one half-penny), and the weekly contributions payable by the employed contributor shall be reduced by one penny:

In view of subs. (11) *infra*, no difficulty will arise in applying this reduction except in Ireland, where the contribution payable by a contributor whose remuneration is under 2*s.* a day is ½*d.* (Second Schedule, Part II). This is met by s. 81 (16) *infra*.

(*d*) There shall be credited to the approved society of which any such person is a member, or, if he is a deposit contributor, to his account in the Post Office fund, the difference between the amount of contributions at such reduced rate actually paid in respect of him and the amount which would have been paid if those contributions had been at the full rate, and the amount of that difference shall be treated as having been expended on sickness benefit, and the proper proportion thereof shall accordingly be paid out of moneys provided by Parliament:

"**Credited.**"—See s. 56 (1) *infra*.

"**Post Office fund.**"—See s. 42 (*a*) *supra*.

S. 47 (1) (e)

"The full rate."—See s. 4 (1) and Second Schedule *supra*.

"The proper proportion."—See s. 3 *supra*.

(*e*) Contributions shall not be payable in respect of any period of disease or disablement during which full remuneration is payable under this section if the prescribed notice has been given:

Cf. the proviso to the Third Schedule (1) under s. 4 (2) *supra*; this is the only case where the employer escapes liability unless the benefit is actually paid. See also s. 10 (4) (*a*) *supra*, which provides that arrears shall not be counted against the insured person in such a case, and it is submitted that this will hold good (as far as he is concerned), even if the "prescribed notice" is not given in accordance with this subs. The provision here merely limits the right of the employer to escape payment of contributions. If through ignorance or carelessness no notice is given, and the employer continues to pay contributions, he cannot recover them, and he is presumably entitled to deduct the contributor's share from his wages, provided he complies with the Third Schedule (5).

(*f*) The rules of an approved society or Insurance Committee as to notices and proof of disease and disablement may extend to periods of disease and disablement during which full remuneration is payable under this section.

"Rules."—See s. 14 (2) (3) *supra*.

(5) Where a person on ceasing to be so employed becomes temporarily unemployed, paragraphs (*b*) and (*d*) of the last foregoing subsection shall continue to apply in respect of him, and sickness benefit shall not be payable in respect of the first six weeks of any period of disease or disablement commencing after he ceased to be so employed, but, for the purpose of calculating the rate and duration thereof, shall be deemed to have been paid during those six weeks, and notwithstanding anything in this Part of this Act a disease or disablement shall not, for the

purposes of sickness benefit, be treated as a continuation of a previous disease or disablement unless the medical practitioner attending such person certifies that it in fact is so. S. 47 (5)

"So employed."—See subs. (1) *supra*.

"Temporarily unemployed."—As to when temporary unemployment ceases to be temporary, see s. 79 *infra*.

"Paragraphs (b) and (d)."—*i.e.*, for the purpose of reckoning his arrears. Probably (*d*) can only apply to such a case if the reduced rate is actually paid up; otherwise the difference between the full and the reduced rate will be credited to the society, although even the reduced payments may not in fact have been made.

"Sickness benefit shall not be payable."—Practically applying paragraph (*a*) *supra*. He may thus be deprived of benefit for those six weeks altogether, even if he is not in arrear at all, if the illness arises after he leaves the employment [see subs. (3) *supra*], except that under the first part of that subs. he will be entitled to remuneration if it is before the end of the calendar year, and his six weeks are not exhausted.

"Notwithstanding anything."—See s. 8 (5) *supra*.

(6) Where such a person as aforesaid ceases to be employed within the meaning of this Part of this Act, and is entitled to become a voluntary contributor paying contributions at the employed rate, paragraphs (*b*) and (*d*) of subsection (4) shall, if he becomes a voluntary contributor, continue to apply in respect of him, and sickness benefit shall not be payable in respect of the first six weeks of any period of disease or disablement commencing after he became a voluntary contributor, but, for the purpose of calculating the rate and duration thereof, shall be deemed to have been paid during those six weeks, and notwithstanding anything in this Part of this Act a disease or disablement shall not, for the purposes of sickness benefit, be treated as a continuation of a previous disease or disablement unless the medical practitioner attending such person certifies that it in fact is so:

S. 47 (6) "**Ceases to be.**"—See s. 79 *infra*.

"**Entitled to become . . . employed rate.**"—After being for five years an "employed contributor, [ss. 1 (3) (*b*) and 5 (1) (*b*)], possibly also if he was under 45 at entry before Jan. 15th, 1913 [s. 5 (1) (*a*)].

"**Paragraphs (b) and (d).**"—See notes to subs. (5) *supra*.

Provided that if any such person at any time wishes to become an ordinary voluntary contributor, he may become such after the payment of twenty-six weekly contributions at the full rate, or, if the society of which he is a member consents, after the payment of such less number of such contributions as the society may appoint.

"**Ordinary voluntary contributor.**"—*i.e.*, paying at the "voluntary rate" [s. 5 (1)], and drawing full sick-pay from the fourth day of illness [s. 8 (1) (*a*)].

"**Twenty-six . . . at the full rate.**"—During which time he would still be subject to the disabilities of this subsection.

(7) Where any employers wish to avail themselves of the provisions of this section as respects the persons employed by them in a class of employment, or in a locality, in which no such custom or practice as aforesaid exists, they may apply to the Insurance Commissioners, and the Commissioners, if, after ascertaining the views of the persons so employed, they think fit, may make a special order extending the provisions of this section as respects the applicants to the class of employment or locality mentioned in the application as if it were a class of employment or locality in which such a custom or practice as aforesaid prevailed.

"**As aforesaid.**"—Subs. (1) *supra*.

"**After ascertaining . . . so employed.**"—By any method of inquiry that they may select and with any result which may satisfy them.

"**Special order.**"—See s. 113, the Ninth Schedule, and Appendix I. 14 (ii).

"**As respects the applicants.**"—Any other applicants even in the same class of employment and locality will, if they want to follow this example, have to get a separate order.

(8) Any question as to whether an employer is entitled to avail himself of the provisions of this section as respects any persons employed by him shall be determined by the Insurance Committee, subject to appeal to the Insurance Commissioners. S. 47 (8)

"**Entitled to avail himself.**"—*i.e.* whether the employment is within the terms of the "special order," not whether such order ought to be made.

"**Shall be determined.**"—Such a question would also be a question within s. 66 (1) (*b*) *infra*, but the difference between the two methods of determination is trifling, and this subsection would, of course, prevail.

(9) The payment of contributions purporting to be at the reduced rate authorised by this section as respects any persons employed by an employer in any class of employment, shall be conclusive evidence that he is, as respects those persons and all other persons employed by him in the same class of employment in the same locality, under the liability imposed by this section.

"**The reduced rate.**"—See subs. (4) (*b*) and (*c*) *supra*.

"**And all other persons . . . in the same locality.**"—Cf. subs. (2) *supra*. If the "special order" does not confine the custom to any locality, then it would appear from that subsection that the presumption will not be confined to any locality either, but the language here is not so clear.

(10) An employer who has given such notice as aforesaid may, by giving three months' previous notice to the Insurance Committee, withdraw his notice as from the commencement of the next calendar year, and in such case, as from that date, this section shall cease to apply in respect of the persons employed by him in the class of employment to which the notice of withdrawal relates.

"**As aforesaid . . . to the Insurance Committee.**"—See subs. (2) *supra*, where, however, it is laid down that the original notice is to be given to the Insurance Commissioners.

S. 47 (10) "**Shall cease to apply.**"—But the employer will not thereby be relieved of any liability imposed on him by the custom, of which the making of the "special order" would (or would not be a strong indication according to the interpretation put upon the words "custom or practice" (see notes to subs. (1) *supra*). He may, however, escape a liability under the second paragraph of subs. (3) if the "term of not less than six months certain" extends beyond the calendar year.

(11) None of the provisions of this section shall apply as respects any person employed at a rate of remuneration which is less than ten shillings a week.

"**Rate of remuneration.**"—See note to subs. (1) *supra*.

(12) Nothing in this section shall relieve any employer from any legal liability to pay wages during sickness to any person employed by him in accordance with any established custom.

See notes to subs. (1) *supra*.

Special provisions as to the mercantile marine.

48.—In the application of this Part of this Act to masters, seamen, and apprentices to the sea service and the sea fishing service the following provisions shall have effect:—

(1) Neither sickness benefit nor disablement benefit shall be paid to a master, seaman or apprentice suffering from any disease or disablement in respect of any period during which the owner of the ship is under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expense of the necessary surgical and medical advice and attendance and medicine, and of his maintenance, but, for the purpose of calculating the rate and duration of sickness benefit, such benefit shall be

deemed to have been paid from the commencement of the disease or disablement until the determination of such liability as aforesaid, and he shall not be entitled to medical benefit during such period : S. 48 (1)

"**Master, seamen, and apprentices.**"—The words include all persons "employed or engaged in any capacity on board any ship." See subs. (10) hereof, which incorporates the definition of the Merchant Shipping Act, and see the Act, 57 and 58 Vict. c. 60, s. 742.

"**Merchant Shipping Act, 1894, as amended.**" As to the liability of the shipowner to maintain and provide medical attendance, etc., see M.S.A., 1906 (6 Edw. 7 c. 48, s. 34) :

"(1) If the master of, or a seaman (or apprentice, *ib.* s. 49) belonging to, a ship (see below) receives any hurt or injury in the service of the ship (including illness brought on by bad provisions, see *Board of Trade* v. *Sundholm*, 4 Asp. 196), or suffers from any illness, not being venereal disease or an illness due to his own wilful act or default (see *In re Young & Harston's Contract*, 31 Ch.D. 168 ; see also *Lewis* v. *G.W. Ry. Co.*, 3 Q.B.D. 195), or to his own misbehaviour, the expense of providing the necessary surgical and medical advice and medicine, and also the expenses of the maintenance of the master or seaman until he is cured, or dies, or is returned to a proper return port (*i.e.*, the port at which he was shipped, or a port in the country to which he belongs, s. 45), and of his conveyance to the port, and in the case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on this account from his wages.

"(2) If the master or a seaman is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to duty, the expense of the removal and of providing the necessary advice and attendance and medicine, and of his maintenance while away from the ship shall be defrayed in like manner.

"(3) The expense of all medicines, surgical and medical advice, and attendance given to a master or seaman whilst on board his ship shall be defrayed in like manner.

"(4) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman who dies whilst on service, shall, if duly proved, be deducted from the wages of the seaman." (See also s. 35, as to the means of recovering such expenses.)

The owners are also bound to supply medicines and carry a store on board (M.S.A, 1894, s. 200), and to carry a doctor on every foreign-going ship having 100 persons on board (*ib.* s. 209).

For the purposes of the above provisions, "ship" means a sea-going ship registered in the United Kingdom, or one which ought to have been so registered. (M.S.A., 1906, s. 49 ; M.S.A., 1894, ss. 260, 266).

There are certain ships (*e.g.*, a ship registered in the Colonies but managed in London), the crew of which are within Part I of this Act,

S. 48 (1) but not within s. 34 of the Merchant Shipping Act, 1906; such men will therefore be entitled to become members of the Seamen's National Insurance Society [see subs. (4)], and to draw benefits while ill on board ship [see subs. (12)], though paying only the same contributions as those seamen who are not entitled to such benefits.

In the case of venereal disease a seaman is not entitled to medical attendance under the Merchant Shipping Act, but he will be entitled to medical benefit if he is a member of the Seamen's National Insurance Society, because under subs. (12) he is deemed to reside in England [cf. ss. 8 (4), 14 (4)], though he will not be so entitled if he elects to join another approved society instead.

(2) In the case of masters, seamen, and apprentices serving on foreign-going ships or ships engaged in regular trade on foreign stations, the employed rate and the employer's contributions shall each be reduced by one penny a week, and every four weekly contributions paid in any calendar year by a master, seaman, or apprentice whilst serving on such a ship shall, for the purposes of determining the number of contributions to be paid by him in that year and for the purposes of calculating arrears, be treated as five such contributions:

"**Foreign-going ships.**"—"Foreign-going ship includes every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits; that is to say the coasts of the United Kingdom, the Channel Islands, and Isle of Man, and the Continent of Europe between the River Elbe and Brest, inclusive." (57 & 58 Vict. c. 60, s. 742.)

The definition apparently includes any ship that "goes foreign" while she is so going, even though habitually engaged in the home or coasting trade. (*Courtney* v. *Cole*, 19 Q.B.D., 447.)

"**Trade on foreign stations.**"—See subs. (10) hereof.

"**The employed rate.**"—The seaman's contributions remain 4*d.* The employer pays 2*d.* and the employed rate is 6*d.*

"**To be paid by him.**"—The seaman is not bound to pay more than 42 contributions in the year, and is therefore entitled under par. (3) of the Third Schedule to demand payment in full of all wages accruing after 42 weeks' service in the year.

"**For the purposes of calculating arrears.**"—See s. 10 (4).

For the purpose of paying up arrears the seaman must pay contributions in full, since four weekly contributions will count as five, only if paid in the calendar year and whilst serving on a foreign-going

S. 48 (2)

Provided that—

(*a*) nothing in this provision shall affect the number of employer's contributions to be paid in respect of such a master, seaman, or apprentice, but no employer's contributions paid in respect of any week in respect of which no contribution is payable by the master, seaman, or apprentice shall be taken into account in reckoning the amount of his arrears ;

(*b*) there shall be credited to the approved society of which the master, seaman, or apprentice is a member, or, if he is a deposit contributor, to his account in the Post Office fund, a sum equal to two-fifths of the amount of the contributions actually paid in respect of him, and an equal sum shall be treated as having been expended on sickness benefit, and the proper proportion thereof shall accordingly be paid out of moneys provided by Parliament :

"**Credited to the approved society.**"—As to the special credit for superannuation allowances, see subs. (7) (*a*) *infra*.

"**Two-fifths.**"—This is in addition to the contributions (less 1⅝*d.*) which are credited to the society under s. 56. For the purpose of making up the Parliamentary grant a further sum is credited and treated as spent [cf. s. 47 (4) (*d*)].

(3) A master, seaman, or apprentice who is neither domiciled nor has a place of

S. 48 (3)

residence in the United Kingdom shall not be deemed to be employed within the meaning of this Part of this Act, but the employer shall be liable to pay the same contributions in respect of him as would otherwise have been payable by him as employer's contributions, except in cases where the ship is engaged in regular trade on foreign stations:

"**Domiciled.**"—"'Domicile' means the place or country which is considered by law to be a person's permanent home" (Dicey on Domicile, p. 1), or, "habitation in a place with the intention of remaining there for ever, unless some circumstances should occur to alter that intention" (per Lord Wensleydale, in *Wicker* v. *Hume*, 4 Jur. N.S. 936).

"**Place of residence.**"—See notes to First Schedule, Part I (*b*), under s. 1 (2) and to s. 8 (4) *supra*.

"**The same contributions.**"—*i.e.*, 2*d.* or 3*d.* weekly according as the ship is engaged in home or foreign trade, see subs. (2). These contributions are expended on British seamen under subs. (6).

"**On foreign stations.**"—See subs. (10).

(4) The Board of Trade shall, as soon as may be after the passing of this Act, cause a society to be formed, to be called the Seamen's National Insurance Society, of which any masters, seamen, and apprentices to the sea service and the sea fishing service who are employed within the meaning of this Part of this Act shall be entitled to become members, but nothing in this section shall prevent any such person joining another approved society instead of the society so formed:

"**Shall be entitled to become members.**"—The right apparently accrues so soon as a master, seaman, or apprentice becomes employed and therefore liable to contribute. How it may be exercised (*e.g.*, whether a seaman can join the society when on ship-board) must depend upon the scheme to be prepared; as to the conditions under

which a person previously insured can join an approved society see ss. 30 (1), 43 (2). There can be no medical examination of candidates for the Seamen's Society, and ss. (6) and (12) confer very great advantages upon members of the Seamen's Society. S. 48 (4)

(5) The affairs of the Seamen's National Insurance Society shall be managed by a committee constituted in accordance with a scheme to be prepared by the Board of Trade with the approval of the Insurance Commissioners, comprising representatives of the Board of Trade, of shipowners, and of members of the society in equal proportions, and the society shall, notwithstanding anything in this Part of this Act, become an approved society :

"**Scheme.**"—This scheme will constitute the committee only. Another "scheme" prepared by the committee will regulate the benefits (subs. 7). See Appendix I, 11 (*a*).

"**An approved society.**"—Save as expressly provided in this section, the other provisions of Part I of this Act will apply to the Seamen's Society in like manner as to other approved societies. The provisions as to transfer values [modified by subs. (7) hereof], reserve values, valuation, and control of funds will therefore apply. It is submitted that the Board of Trade scheme cannot vary these provisions. (Sed. cf. s. 78.)

(6) All contributions paid by employers in respect of masters, seamen, or apprentices who are neither domiciled nor have a place of residence in the United Kingdom, and consequently deemed not to be employed within the meaning of this Part of this Act, shall be credited to the Seamen's National Insurance Society:

"**Contributions.**"—See subs. (3).

(7) In addition to medical, sanatorium, sickness, disablement, and maternity benefits,

S. 48 (7)

members of the Seamen's National Insurance Society shall be entitled to such other benefits as may be provided under a scheme to be prepared by the committee of management, with the approval of the Board of Trade and the Insurance Commissioners, and such other benefits shall include pensions for masters and seamen with long sea service, and the scheme may provide for preference being given to masters and seamen who have served in foreign-going ships or ships engaged in foreign trade over those who have served in the coasting and home trade ships, and such preference may be proportionate to the length of time spent in the first-mentioned service:

"**Such other benefits.**"—These need not apparently be "additional benefits" as defined in s. 8 (1) (*f*) and the Fourth Schedule. It is submitted that s. 37 (3) does not apply to these benefits which are not paid out of a surplus found on valuation.

"**As may be provided.**"—It is not clear whether Parliament will pay two-ninths of the cost of these benefits also; see notes to s. 44 (2) *supra*. See Appendix I, 11 (*b*).

Provided that—

(*a*) The scheme shall provide for making a proper proportion of the sums credited to the Seamen's National Insurance Society under the last foregoing subsection applicable towards the payment of pensions or superannuation allowances granted by other approved societies to members with such sea service that, had they been members of the Seamen's National Insurance

Society, they would have been entitled to pensions under the scheme; and S. 48 (7) (a)

(*b*) in the case of the transfer of a member of the society to another approved society, the transfer value payable in respect of him shall be calculated with reference to the liabilities of the society for benefits other than such pensions as aforesaid:

"**Transfer value.**"—Par. (*a*) refers only to men who are not members of the Seamen's National Insurance Society at all. A man who is a member of that society cannot transfer his pension rights to any other, but may transfer his other rights. As these do not include any right to the additional benefits mentioned in s. 8 (1) (*f*), though they may include other extra benefits, this may cause his transfer value to be slightly less than that of a member of an ordinary approved society of the same age. On the other hand he will continue after transfer to be entitled to a pension from the Seamen's National Insurance Society.

(8) The rules of the Seamen's National Insurance Society shall provide for allowing a member who leaves the sea service and is unable to obtain admission to another approved society on account of the state of his health to continue a member of the Seamen's National Insurance Society for the purposes of this Part of this Act, and the rules of that society may provide that a member of the society who has fulfilled the conditions entitling him to such pension as aforesaid shall not be deprived of his right to the pension by reason only that he has ceased to be a member of the society at the time when the pension first becomes payable or ceases so to be at any subsequent time:

Cf. s. 46 (3) (*h*).

S. 18 (9)

(9) Where a master, seaman, or apprentice is at the commencement of this Act a member of a society which becomes an approved society he may, if that society and the Seamen's National Insurance Society so agree, continue to be a member of the first-mentioned society for the purposes of benefits under this Part of this Act other than pension, and become a member of the last-mentioned society for the purposes of pension only, and in such case the balance of the contributions payable in respect of him (after deducting the sums to be retained by the Insurance Commissioners towards discharging their liabilities in respect of reserve values) shall be divided between the two societies in such proportion as they may agree :

Cf. subs. (2) (*b*) hereof.

In the case of a seaman in a foreign-going ship no provision is made as to the division between the Seamen's Society and another approved society of the special Parliamentary grant under par. (*b*) of subs. (2), which is not in the usual language of the Statute included in the term contributions.

(10) Expressions in this section have the same meaning as in the Merchant Shipping Acts, 1894 to 1907, and the expressions "foreign-going ships" and "home trade" ships include ships engaged in the sea-fishing service, and the expression "ship engaged in regular trade on foreign stations" means a ship engaged regularly in trade between ports outside the British Islands when trading between such ports, but, for the purposes of this provision, a

ship shall not be deemed not to be engaged in such a trade by reason only that she puts into a port in the United Kingdom for the purpose of survey or repair: S. 48 (10)

(11) The provisions of this Part of this Act affecting the employed rate and the rates of contributions of employers and contributors in Ireland, and depriving insured persons in Ireland of medical benefit, shall not apply to any such master, seaman, or apprentice, unless he has a permanent place of residence in Ireland and is not a member of the Seamen's National Insurance Society; and in the case of a master, seaman, or apprentice serving on a foreign-going ship or a ship engaged in foreign trade to whom such provisions do apply the amount by which the employed rate and the employer's contributions are to be reduced shall be one half-penny a week:

"**Ireland.**"—See s. 81 and the Second Schedule, Part II.

"**Permanent place of residence.**"—See notes to First Schedule, Part I (*b*), under s. 1 (2) and s. 8 (4) *supra*.

(12) Members of the Seamen's National Insurance Society shall, for the purposes of this Part of this Act, be deemed to reside in England, and the medical benefit and sanatorium benefit of such members shall be administered by the society instead of by the Insurance Committee, and the provisions of this Part of this Act relating to the

S. 48 (12)

administration of those benefits shall apply accordingly subject to such modifications as may be prescribed, but nothing in this provision shall prevent the society agreeing with Insurance Committees for the administration of those benefits by the Committees in relation to individual members of the society.

"**Prescribed**"—See Appendix I, 11 (*e*).

"**Deemed to reside in England.**"—The effect of this subsection is that a man who is a member of the Seamen's Society is entitled to benefit in whatever part of the world he may be so long as the owner of the ship is not liable to provide him with necessaries (*e.g.*, if he has been returned to a foreign port at which he was shipped, or is suffering from an injury resulting from his own misconduct); but a seaman who is not a member of the Seamen's Society is not entitled to benefits (other than maternity benefit) from his approved society while abroad. [See s. 8 (4).]

Provisions as to persons over sixty-five at commencement of Act.

49.—(1) If any person who is of the age of sixty-five or upwards and under the age of seventy at the commencement of this Act is employed within the meaning of this Part of this Act, the like contributions shall, until he attains the age of seventy, be payable by his employer in respect of him as in the case of employed contributors, and the provisions of this Part of this Act relating to the payments of contributions and the recovery thereof shall apply accordingly.

"**Over the age of sixty-five.**"—See s. 1 (4) *supra*.

"**The commencement of this Act.**"—July 15th, 1912, subject to s. 115; for provisions with regard to persons who become employed when over 65 after that date see s. 4 (4).

"**Contributions.**"—S. 4 (1) and the Second Schedule.

"**Payment . . . recovery.**"—S. 4 (2) and the Third Schedule.

(2) For every weekly contribution made by or in respect of such a person, there shall be contributed

out of moneys provided by Parliament the sum of two pence. S. 49 (2)

"Contributed . . . Parliament."—*i.e.*, the State grant will be an addition to contributions, not benefits, cf. s. 3 *supra*.

(3) If such a person becomes a member of an approved society for the purposes of this section all contributions payable in respect of him under this section (including contributions out of moneys provided by Parliament) shall be credited to the society, and he shall become entitled to such benefits as the society may determine, but no reserve value shall be credited to the society in respect of him and no part of the contributions payable in respect of him shall be retained by the Insurance Commissioners towards the discharge of their liabilities in respect of reserve values.

"Reserve value."—S. 55 (1), (2) *infra*.
"Retained."—S. 55 (3) *infra*.

(4) If such a person does not become a member of an approved society as aforesaid he shall become a deposit contributor, and accordingly all contributions payable in respect of him (including contributions out of moneys provided by Parliament) shall be carried to his credit in the Post Office fund, but the benefits to which he becomes entitled shall be such as may be determined by the Insurance Committee.

"Deposit contributor."—S. 42 *supra*.

(5) No part of the cost of benefits under this section shall be payable out of moneys provided by Parliament.

Such a person has received his Parliamentary grant in the form of a weekly contribution. Subs. (2) *supra*.

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Special provisions as to seasonal trades.

50.—Where it is proved to the satisfaction of the Insurance Commissioners that a trade or business carried on by any employers is of a seasonal nature and subject to periodical fluctuation, and that those employers systematically employ persons throughout the year and work short time during the season when the trade or business is depressed, the Insurance Commissioners may make a special order reducing, as respects such persons, the employed rate and the contributions payable by the employers and contributors to such extent and for such period in the year as may be specified in the order, and increasing such rate and contributions to a corresponding extent and for a corresponding period during the remainder of the year, and the order may contain such incidental, supplemental, and consequential provisions as may appear necessary for adapting the other provisions of this Part of this Act to cases under this section.

"**Systematically.**"—This does not necessarily mean that the whole of the same persons will be employed throughout the year, and it may, of course, happen that some persons having paid the higher rate of contribution during the busy season will either be dismissed (from some cause unconnected with the depression) or voluntarily seek other employment during the slack season, in which case the full ordinary rate will have to be paid in respect of them.

"**Special Order.**"—See s. 113, the Ninth Schedule, and Appendix I, 14 (iii).

"**The employed rate.**"—See s. 4 (1) and the Second Schedule *supra*.

Special provisions as to inmates of charitable homes, &c.

51.—(1) Where the managers of any institution carried on for charitable or reformatory purposes prove that the persons who are inmates of and supported by the institution receive maintenance and medical attendance when sick, the Insurance Commissioners may grant a certificate of exemption to those managers, and, where such a certificate of

exemption is granted, any such inmates who are employed by the managers of the institution shall not in respect of such employment be deemed to be employed within the meaning of this Part of this Act: S. 51 (1)

"**Charitable.**"—See notes to s. 12 (1) *supra.*

"**Reformatory.**"—Including a Reformatory School under the Children Act, 1908, and also a Rescue Home or similar institution.

"**Inmates.**"—The word is wide enough to include not only the patients or other recipients of the charity of such an institution, but also the indwelling staff, as, *e.g.*, the nurses living in a hospital. It has been held that a clerk is an "inmate" of his employer's place of abode within s. 150 of the Public Health Act, 1848 (*Mason* v. *Bibby*, 2 H. & C. 881). "It would rather seem that every lodger is an 'inmate'" (*Buxton* v. *Jones*, 1 M. & G. 86, and note thereto). See also *R.* v. *Slade*, 65, L.J.M.C. 109.

"**Certificate of exemption.**"—Cf. s. 2 *supra.*

"**Who are employed.**"—It is very doubtful whether an ordinary inmate can be said to be employed within the meaning of this Act. See notes to the First Schedule, Part I (*a*), under s. 1 (2) *supra*, and especially *Burns* v. *Manchester and Salford Wesleyan Mission* (99 L.T. 579).

Provided that it shall be a condition of such exemption that the managers shall be liable to pay in respect of any such inmate who, having been an inmate of the institution for more than six months, leaves the institution, the following sums:

(*a*) In the case of a person who was at the time of entering the institution below the age of sixteen, such capital sum as will be sufficient to secure him benefits under this Part of this Act at the full rate;

"**Liable to pay.**"—To the National Health Insurance Fund, s. 54 (1).

"**Below the age of sixteen.**"—There will be nothing to pay unless he is of the age of 17 or upwards on leaving, s. 9 (4).

"**Such capital sum.**"—See s. 9 (4) *supra*, but note that nothing is payable until the person becomes an employed contributor, or if he has spent his time since attaining the age of 17 "in a school or college, in indentured apprenticeship or otherwise under instruction without wages, or otherwise in the completion of his education"—which would apply to the majority of the institutions referred to here.

S. 51 (1) (b) —

(b) In the case of a person who was at the time of entering the institution of the age of sixteen or upwards, and who was at that time an insured person and a member of an approved society, a sum equal to the value, calculated in the prescribed manner, of the contributions which, apart from this section, would have been payable in respect of him during the time he was in the institution.

"The value of the contributions."—See note to s. 43 (2) (a) *supra*, and Appendix I, 15 (h).

(2) Every such inmate as aforesaid shall, if he was an insured person before entering the institution, be suspended from benefits whilst he is such an inmate, and, if he was at such time a member of an approved society and has been an inmate of the institution for a period exceeding six months, the time during which he is in the institution shall be disregarded for the purpose of reckoning arrears.

Any period less than six months will be counted in reckoning arrears.

Special provision as to persons becoming certificated teachers.

52.—Where a person who has been employed to teach in a public elementary school ceases to be employed within the meaning of this Part of this Act by reason of becoming a teacher to whom the Elementary School Teachers (Superannuation) Act, 1898, applies and does not become a voluntary contributor, there shall be paid to the Board of Education by the approved society of which he is a member or, if he is not a member of an approved society, out of the amount standing to his credit in the Post Office fund, a sum equal to the value

calculated in the prescribed manner of the contributions paid by or in respect of him under this Part of this Act since he first began to teach in a public elementary school, or, if the amount standing to his credit is less than that sum, then the whole amount so standing to his credit; and the sum so paid to the Board of Education shall be placed by them to his credit in the Deferred Annuity fund in accordance with the rules for the time being applicable thereto. S. 52

"**Employed.**"—A teacher is employed within the meaning of this Act only if employed "under a contract of service or apprenticeship." See the First Schedule, Part I (*a*) and note thereto, under s. 1 (2) hereof.

The assumption underlying the present section of the Act is that an elementary school teacher is an employed person within the meaning of the Act, *i.e.*, is under a contract of service. See, however, *Crisp* v. *Thomas*, 63 L.T. 756, and *Baxter* v. *Barber*, *Times Newspaper*, 24th April, 1903, on the question whether a teacher is under a contract of service or no. See also *Crocker* v. *Plymouth Corporation* (1903), 1. K.B. 494, as to who is the employer of a teacher in a non-provided school.

It would appear on the whole that since an assistant-teacher is bound to conform to the directions of the headmaster as to the manner in which he shall discharge his duties, his contract is clearly one of service, though the cases above cited throw some doubt upon the question of whom he serves.

"**Ceases to be employed.**"—See First Schedule, Part II (*d*) under s. 1 (2) *infra*.

"**The Elementary School Teachers Superannuation Act, 1898.**"—This Act (61 & 62 Vict. c. 57) applies to every teacher certificated after the passing of the Act (*ib.* 51) and to those previously certificated who elected to come under the scheme. Such teachers are excluded from the number of employed contributors under this Act [First Schedule, Part II (*d*)]. "The expression 'certificated teacher' means a teacher who is recognised under the Education Code as a certificated teacher for public elementary schools" (61 & 62 Vict. c. 57, s. 11), or under its Scotch Education Code as a certificated teacher in a school in receipt of annual Parliamentary grant (*ib.* s. 12).

"**Value calculated in the prescribed manner.**"—This value bears no relation whatever to the transfer value of an insured person under s. 31 (1), but is a purely arbitrary sum. The intention is apparently that the Post Office or approved society should pay to the Board of Education the surplus of the contributions previously paid by the Local Education Authority in respect of the teacher over the estimated expenditure on benefits. If the actual amount of the con-

S. 52

tributions be taken it is clear that a society must pay considerably more than it has ever received in respect of such a teacher, since by reason of s. 55 (3) it is credited with only seven-ninths of those contributions; and there is no provision in this section that the sum paid out shall be treated as having been expended on benefits for the purpose of recovering Parliamentary grant equal to the other two-ninths. It is, however, clearly the intention of the section that the sums so payable in respect of a deposit contributor and of a society member should be calculated in the same manner. See Appendix I, 15 (*i*).

"**The amount standing to his credit.**"—This proviso apparently applies only to the deposit contributor, as the phrase is meaningless when applied to a society member.

"**To his credit in the Deferred Annuity fund.**"—S. 4 of the Act of 1898, provides that the amount of teachers' annuities shall be determined "in respect of the contributions made by them from time to time under this Act." It is presumably the intention of this section that the sum so "placed to his credit in the Deferred Annuity fund" should for the purpose of estimating his annuity be treated as a "contribution made by him" under the Act of 1898.

As to Irish teachers see s. 81 (17).

Application to other persons in the service of the Crown.

53.—(1) This Part of this Act shall apply to persons employed by or under the Crown, other than those with respect to whom special provision is made by this Part of this Act, in like manner as if the employer were a private person:

Provided that, in the case of a person employed in the private service of the Crown, the head of the department of the Royal Household in which he is employed shall be deemed to be his employer.

Subject, however, to the exemption of persons within the First Schedule, Part II (*b*), under s. 1 (2) *supra*.

"**Other than those . . . . this Act.**"—The First Schedule, Part II (*a*), (*b*) and s. 46 *supra*.

(2) The provisions of this Act relating to reduced insurance in cases where the employer is liable to pay wages during sickness shall extend in respect of persons employed by or under the Crown to cases where two-thirds only of the full remuneration are payable during periods, or parts of periods, of disease or disablement, if such remuneration is so payable for not less than three months in any year,

and those provisions shall apply accordingly as if two-thirds of the full remuneration were substituted for the full remuneration and as if three months were substituted for six weeks as the maximum amount of time during any year such remuneration is payable. S. 53 (2)

"**Reduced insurance.**"—See s. 47 *supra.*

Financial Provisions.

54.—(1) All sums received in respect of contributions under this Part of this Act and all sums paid out of moneys provided by Parliament under this Part of this Act in respect of the benefits thereunder and the expenses of administration of such benefits shall be paid into a fund, to be called the National Health Insurance Fund, under the control and management of the Insurance Commissioners, and the sums required to meet expenditure properly incurred by approved societies and insurance committees for the purposes of the benefits administered by them and the administration of such benefits shall be paid out of that fund. National Health Insurance Fund.

"**Moneys provided by Parliament.**"—These include not only the statutory two-ninths under ss. 3, 46, 47, and 48, but also the sanatorium penny under s. 16 (2) (*b*); and, under the head of "contributions," the sums referred to in the proviso to s. 4 (1) and in s. 49 (2).

"**The National Health Insurance Fund.**"—As to the somewhat complicated adventures of the money paid into this fund, see Chap. VI *supra.* To take the processes in their chronological order. First comes payment into the fund under s. 54 (1); next, deduction of the 1⅝*d.* contributed to reserve values, under s. 55 (3); then the crediting to societies under s. 56 (1) (*a*); then the ascertainment of balances available for investment under s. 54 (3); and finally the division of the balances under s. 56 (1) (*b*), and the application of the divided portion under s. 54 (3) and under s. 56 (2).

"**Paid out of that fund.**"—An approved society has apparently unlimited power of drawing upon the National Health Fund for the cost of benefits under the Act, and the proper expenses of management.

S. 54 (2)

(2) The sums payable to the said fund out of moneys provided by Parliament shall be paid in such manner and at such times as the Treasury may determine.

Cf. ss. 3, 4 (1), 46 (3) (*b*), 47 (4) (*d*), 48 (2) (*b*), 49 (2) and the Second Schedule.

Parliamentary contributions under ss. 4 (1), 49 (2) and the Second Schedule obviously stand on a different footing from the Parliamentary proportion of benefits and will presumably be paid at a different time.

(3) The Insurance Commissioners shall ascertain periodically what sums standing in the National Health Insurance Fund to the credit of the several societies and of the Post Office fund and of the Navy and Army Insurance Fund are available for investment, and the amount so ascertained shall, so far as not required under the provisions of this Part of this Act to be paid over to societies for investment, or to be retained for investment on their behalf, or for the discharge of liabilities of societies, be carried to a separate account, called the Investment Account, and shall be paid over to the National Debt Commissioners and by them invested in accordance with regulations made by the Treasury in any securities which are for the time being authorised by Parliament as investments for Savings Banks funds, but those Commissioners shall, in making the investment, give preference to stock or bonds issued under the provisions of the Acts relating to borrowing for raising capital for the purposes of the local loans fund where the purposes for which such capital is required is the making of advances for the purposes of the Housing of the Working Classes Acts, 1890 to 1909:

Provided that nothing in this provision shall prevent the Insurance Commissioners paying over

to the National Debt Commissioners for temporary investment, pending the ascertainment of the amount available for investment as aforesaid, any sums in the National Health Insurance Fund not required to meet current liabilities. S. 54 (3)

"To the credit," *i.e.*, under s. 56 (1) (*a*).

"Several societies."—Including the Seamen's Society [s. 48 (5)].

"Available for investment."—It is apparently a matter entirely for the discretion of the Commissioners what proportion of a society's balance, under s. 56 (1), can properly be invested.

"To be paid over," *i.e.*, under s. 56 (1) (*b*). Three-sevenths of the moneys not required for the discharge of liabilities are to be carried to Investment Account.

"Securities—authorised."—See the Savings Bank Act, 1863, 26 and 27 Vict. c. 87, s. 19.

"Local loans fund—housing."—See 53 and 54 Vict c. 70, ss. 25, 43, 65, 66, 67; 63 and 64 Vict. c. 59, s. 3 (2); 3 Edw. 7, c. 39, ss. 1, 15; 9 Edw. 7, c. 44, ss. 3, 4, 30.

The effect of these sections is shortly that money may be advanced to a local authority for the purposes of housing and improvements on the security of the rates up to any amount, the period of repayment being 80 years. It may be advanced to a society registered under the Industrial and Provident Societies Act, 1893, and prohibited from paying more than 5 per cent., on mortgage of freehold or long leasehold premises, up to two-thirds of the value, and may be advanced to other persons and companies undertaking the housing of the working classes up to one-half of the value of the mortgaged premises, the period of repayment in either case being forty years.

(4) There shall be credited to the Post Office fund and to the Navy and Army Insurance Fund interest at the prescribed rate per annum on the sums from time to time standing to the credit of those funds in the Investment Account.

Cf. s. 56 (1) (*c*), and Appendix I, 12 (*a*).

(5) The accounts of the National Health Insurance Fund shall be audited by the Comptroller and Auditor-General in such manner as the Treasury may direct.

(6) The National Debt Commissioners shall present to Parliament annually an account of the

S. 54 (6) securities in which moneys forming part of the said fund are for the time being invested.

Reserve values.

55.—(1) The Insurance Commissioners shall cause tables to be prepared showing, in cases in which such provision is necessary, the capital sums (in this Part of this Act referred to as "reserve values") which it is necessary to provide in respect of members entering into insurance at ages over the age of sixteen to meet the estimated loss (if any) arising through the acceptance by an approved society of such persons as members upon the terms and conditions as regards contributions and benefits prescribed by this Part of this Act.

See Appendix I, 13 (*f*).

"**In cases in which such provision is necessary.**"—The reserve value of a person entering into insurance is the sum with which an approved society containing him would be debited in respect of him on actuarial valuation. It is, therefore, at the moment of his entering into insurance, the same as his transfer value, under ss. 31 (1) and 43 (1). The reserve value of any insured person may therefore be properly defined as his transfer value at the time of becoming insured. Thereafter his transfer value varies from day to day, but his reserve value remains constant. In calculating the reserve values it must be observed that the liability of a society which accepts him is to provide seven-ninths of the benefits and cost of administration under this Part of this Act. The contributions which it will receive for the purpose in respect of an employed contributor [s. 4 (1), Second Schedule] and of a voluntary contributor below the age of forty-five entering into insurance within six months after the commencement of this Act [5 (1) (*a*)] are 7*d.* per week, less $1\frac{2}{9}$*d.* [subs. (3) hereof], *i.e.*, $5\frac{7}{9}$*d.* or $\frac{7}{9}$ of 7*d.*

In the case of (*a*) voluntary contributors entering into insurance above the age of 45;

(*b*) voluntary contributors entering into insurance after six months from the commencement of the Act,

the contributions are to be increased; and in the case of

(*c*) employed contributors entering into insurance above the age of 65;

(*d*) employed contributors (other than married women, widows, or persons emerging from school, college, or apprenticeship) entering into insurance above the age of 17 and after 12 months from the commencement of this Act:

the benefits are to be reduced. The Insurance Commissioners are charged with the duty of preparing tables for all of these cases, the apparent intention of the Act being that the contributions should in each case be equivalent to seven-ninths of the corresponding

benefits, with the addition in cases (*b*) and (*d*) of $1\frac{5}{8}d.$ contribution to reserve values. S. 55 (1)

In these cases probably no reserve values will be required to enable approved societies to accept such members without loss.

See also s. 44 (1).

"**Members entering into insurance.**"—A person entering into insurance will not in general be already a "member" of an approved society, and it is therefore submitted that the word "members" is synonymous with "persons," and that a reserve value is ascribed to every person entering into insurance within 12 months from the commencement of the Act, though it is not credited to any account unless and until he joins an approved society. See subs. (2) hereof and note thereto.

"**Contributions.**"—See ss. 4 (1), 5 (1).

"**Benefits.**"—See ss. 8, 9, 10.

"**The estimated loss.**"—The amount of the reserve values so estimated will depend on two elements:

(1) The age of the person entering into insurance.

(2) The actuarial tables of sickness and maternity rates used in estimating the liability of the society. The Government actuaries in their published estimates of the total reserve values required, do not take into account the value of the prospective extension of benefits under s. 8 (9) of the Act; and it is submitted that since the Act makes no definite provision as to the amount of such extension, which is a matter for subsequent legislation, this section does not require that it should be taken into account. The liability of the society is, therefore, to pay seven-ninths of the cost of benefits and management, including additional benefits [s. 8 (1) (*f*)], receiving a contribution of $5\frac{1}{8}d.$ per week for the purpose [see subs. (3) hereof].

The actuarial tables of sickness will not necessarily be the same for all the divisions of the United Kingdom. It is claimed that the rates of sickness are lower in Scotland than in England, and if this be the case the reserve values credited to Scotland may be smaller assuming an equal age distribution in the two countries; a lower age distribution in Scotland would increase the disparity. The provisions for writing off the reserve values made by subs. 1 (3) and (4) hereof is, however, precisely the same in all the members of the United Kingdom, so that it may be reasonable to anticipate in consequence of the provision for separation of funds made by ss. 80–82 hereof, that the period occupied by this process of writing off may be shorter in Scotland, and probably longer in Ireland, than in England, and the times at which the benefits will be extended in the different countries would vary accordingly. [See s. 83 and notes thereto, and the notes to subs. (4) hereof.]

(2) On a person of the age of seventeen or upwards joining an approved society for the purposes of this Part of this Act, there shall be credited to the society the reserve value (if any) appropriate to such person in accordance with such tables.

S. 55 (2) The sums so credited to a society in respect of reserve values shall carry interest at the rate of three per centum per annum.

"**A person.**"—The word clearly includes a person who is already a deposit contributor. If he became a deposit contributor within twelve months from the commencement of the Act, an approved society accepting him at any time thereafter becomes liable to him for the full benefits under the Act, and his is, therefore, one of the "cases in which such provision (*i.e.*, of reserve values) is necessary" in the words of subs. (1) hereof.

The sum carried by him under s. 43 (2) from the Post Office account to the credit of the approved society is the excess of his transfer value over his reserve value [see note to subs. (1) hereof]; and it is therefore clear that a society cannot accept him without loss unless a reserve value is credited to the society in respect of him making up the full transfer value. Since it is the policy of the Act to encourage insured persons to join approved societies (*e.g.*, no additional benefits are payable to deposit contributors) it appears that the somewhat ambiguous language of this and the preceding subsection intends that a reserve value shall be credited to the approved society in such a case. This contention is supported by the fact that every such person is compelled to contribute to the reserve values fund under the sub-section next ensuing.

(3) Out of each weekly contribution paid by or in respect of an insured person who is a member of an approved society (other than a voluntary contributor who entered into insurance within six months after the commencement of this Act and at the date of that entry was of the age of forty-five years or upwards) there shall be retained by the Insurance Commissioners the sum of one penny and five-ninths (or in the case of women one penny half-penny), and the amounts so retained shall, together with any other moneys available for the purpose, be applied in manner provided by this Part of this Act towards discharging the liabilities of the Insurance Commissioners to approved societies in respect of the reserve values created by this section.

"**An insured person.**"—There are three other exceptions to the number of insured persons to whom this section applies, beside the one expressly set out in this subsection. Married women voluntarily

insured, and aliens, pay nothing to the reserve fund [ss. 44 (2) (*c*) and 45 (2) (iv)]; and in the case of naval seamen, marines and soldiers who are members of approved societies, 1*d.* only is deducted from their contribution for reserve values, the remaining $\frac{5}{9}$*d.* being contributed out of the Navy and Army Insurance Fund [(s. 46 (2) (iv.)]. S. 55 (3)

"**Shall be applied.**"—That is to say in the manner provided by the next subsection. All such moneys, though not immediately credited to any society, remain a part of the National Health Insurance Fund under s. 54 (1), unless and until dealt with under s. 56 (1) (*b*).

(4) The Insurance Commissioners shall periodically apportion amongst the several societies, including the Navy and Army Insurance Fund, the sums retained by them, and the sums, if any, otherwise available for the discharge of such liabilities as aforesaid, in proportion to the amount of reserve values for the time being credited to the several societies, and shall credit to each society the amount so apportioned, and any balance of the sums so credited to a society, after providing for interest on the reserve values for the time being credited to the society, shall be written off the amount of the reserve values so credited.

"**Sums . . . otherwise available.**"—*e.g.*, under s. 10 (1) and s. 43 (1) (*b*).

"**Shall credit.**"—The effect of this provision is that approved societies receive a total credit equal to the total contribution, but two-ninths of the contributions are dealt out among the societies according to the age of their members and not according to the source of the contributions.

"**In proportion to the amount of reserve values for the time being credited.**"—The effect of this is to provide for the simultaneous extinction of all reserve values in English societies, whether credited in respect of men or women. So also the Scottish reserve values will be simultaneously extinguished, though the period may be reached either earlier or later in Scotland, Ireland or Wales according to the sickness there experienced.

"**Shall be written off the . . . reserve values.**"—The effect is simply to substitute slowly a real credit for the purely fictitious one provided by subs. (2), which is in fact nothing more than a device for distributing the State grant in accordance with the age distribution in different societies. These fictitious reserve values are slowly transformed into the real reserves of the different approved societies, four-sevenths of which will be under their private control [(s. 56 (1) (*b*)].

S. 55 (4) When this period of substitution is completed the benefits are to be extended under s. 8 (9); a part of the 1⅝*d.* being set free for the purpose. It is however clear that to maintain actuarial soundness a further reserve must be built up in respect of such extended benefits, and a part of the 1⅝*d.* must therefore still be retained for the purpose.

(5) If any person is convicted of the offence of knowingly making any false statement as to his age in any declaration made for the purpose of obtaining a reserve value to be credited to an approved society in respect of him, the reserve value shall be cancelled and the member of the society in respect of whom it was credited shall be treated as if he had entered into insurance after the expiration of one year from the commencement of this Act.

"**Offence.**"—The member will also be liable to three months' imprisonment or a fine (S.J. Act, 1879), under s. 69 (1) hereof.

"**Shall be treated as if,**" &c.—If an employed contributor, his benefits will be reduced [s. 9 (4)], and if a voluntary contributor his contributions will be increased [s. 5 (1)].

Transactions between the Insurance Commissioners and societies.

56.—(1) The Insurance Commissioners shall, subject to the approval of the Treasury, make regulations with respect to crediting and debiting to the several societies sums received and paid by the Insurance Commissioners on behalf of and to societies and as to the payments to be made by and to the Commissioners to and by societies, and those regulations shall, amongst other things—

(*a*) provide for crediting to each society the contributions paid by or in respect of the members of the society after deducting the amounts retained thereout for discharging the liabilities of the Insurance Commissioners in respect of reserve values;

"**Make regulations.**"—See s. 65 and Appendix I, 12 (*b*).

"**Paid . . . to societies.**"—These payments are not apparently limited to the amount of the society's credit; but are limited under s. 54 (1) to expenditure properly incurred, *i.e.*, for minimum or additional benefits and management. S. 56 (1) (*a*)

"**The amounts retained.**"—These are also credited [s. 55 (4)], but not to the same societies.

(*b*) require the Insurance Commissioners, on carrying any sum to the credit of an approved society in the investment account, to pay over to the society for investment, or, at the request of the society, to retain for investment on behalf of the society four-sevenths, or, so far as the sums are attributable to women, one-half, of the amount so credited to the society;

"**Investment account.**"—See s. 54 (3) and note thereto.

"**At the request of the society.**"—The effect of making such a request is that the society may be exempted from giving other security to the Commissioners [s. 26 (1)].

"**Retain for investment.**"—See subs. (3) hereof.

"**Amount so credited.**"—The words "so credited" clearly refer to the process of crediting under par. (*a*) hereof. The sum to be paid over under this paragraph must be estimated before any sum can be carried to the Investment Account under s. 54 (3). The clear intention of the section is that the balance of the member's contribution should be paid to his society, and the balance of the employer's contribution to the Investment Account.

(*c*) provide for crediting to each society interest at the prescribed rate per annum on the sums for the time being standing to the credit of the society in the investment account;

"**The prescribed rate.**"—The actuarial calculations upon which the financing of the benefits is based are made on the assumption that the rate of interest will be 3 per cent.; any higher rate obtained will increase the possibility of additional benefits, but will have no effect in diminishing the period for extension of benefits after substitution of reserve values.

(*d*) provide for the discharge of debit balances in such manner as the Insurance

S. 56 (1) (d)

Commissioners determine, either by the reduction of the reserve values credited to the society or out of the proceeds of the realisation of securities held by the society or by the Commissioners on behalf of the society, and out of the sums standing to the credit of the society in the investment account proportionately:

"**Reduction of the reserve values.**"—See s. 43 (1) (*a*), and the proviso to s. 44 (2). The effect of reducing the reserve values is to penalise the society concerned by diminishing its share of the credits given from time to time under s. 55 (4).

"**Sums standing to the credit.**"—Approved societies are not concerned with the fluctuations in capital value of securities held by the National Debt Commissioners for the Investment Account, but are absolutely entitled, for the purpose of discharging their debit balances, to the sums so standing to their credit. (Cf. the provisions of the various Savings Banks Acts.)

Provided that, in the case of any society which gives notice to that effect to the Insurance Commissioners, no part of the sums carried to the credit of the society in the investment account shall be paid over to the society or retained by the Commissioners for investment on its behalf, but the whole amount shall remain to the credit of the society in the investment account, and in such case the regulations made under the foregoing provisions shall apply to the society subject to the prescribed modifications.

"**Notice.**"—The effect of such notice will be to relieve the society from the task of supervising its investments, to guarantee its funds, and to relieve it of the need for giving security.

(2) Every approved society shall invest any sums paid to the society for investment, and shall for the purpose have power to invest in any securities in which trustees are for the time being by law em-

powered to invest trust funds, or in any stocks, mortgages, or other securities issued by any local authority within the meaning of the Local Loans Act, 1875, and charged on any rates levied by or on the order or precept of such authority, or in any other securities for the time being approved by the Insurance Commissioners. S. 56 (2)

"**Trust funds.**"—See the Trustee Act, 1893 and the Colonial Stock Act, 1900 (56 & 57 Vict., c. 53, s. 1; 63 & 64 Vict., c. 62, s. 2).

"**Local Loans Act, 1875.**"—"Security" under the Act "means any debenture, debenture stock, annuity, certificate, coupon, or stock certificate to bearer issued under this Act" (38 & 39 Vict., c. 83, s. 34).

"**Rates.**"—See definition of a rate in the Local Loans Act, 1875, *loc. cit.* See Appendix I, 12 (2).

(3) Where, at the request of a society, the Insurance Commissioners instead of paying over any sum to the society retain such sum for investment on behalf of the society, they shall invest such sum in accordance with the directions of the society in any securities in which the society might have invested it had it been paid over to the society, and shall from time to time vary such investments in accordance with the like directions, and shall pay over to the society all sums received by way of interest or dividend on the investments held by them on behalf of the society.

"**In any securities.**"—See subs. (2) hereof and note thereto.

(4) Every approved society shall apply the sums received by way of interest or dividend on investments held by the society or by the Insurance Commissioners on behalf of the society towards the cost of the benefits under this Part of this Act of the members of the society and the cost of the administration of those benefits, or otherwise, as the Insurance Commissioners may prescribe.

S. 56 (4)

"**Dividend on investments.**"—Both investments and dividend held by the society under this section are "assets under this Act" within the meaning of ss. 35 (1) (*b*) and 36 (1), and must be valued from time to time in manner provided by s. 36.

See Appendix I, 12 (*c*).

Insurance Commissioners: Advisory Committee.

Constitution of Insurance Commissioners, appointment of inspectors, &c.

57.—(1) As soon as may be after the passing of this Act there shall be constituted for the purposes of this Part of this Act Commissioners (to be called the Insurance Commissioners), with a central office in London, and with such branch offices as the Treasury may think fit, and the Commissioners shall be appointed by the Treasury, and of the Commissioners so appointed one at least shall be a duly qualified medical practitioner who has had personal experience of general practice.

"**Insurance Commissioners.**"—As to the powers and duties of the Commissioners see s. 65 *infra*, and note thereto, and Appendix I, 17.

"**Personal experience of general practice.**"—The necessity to have had personal experience of general practice only applies to the medical member of the English Commissioners and not to those of Scotland, Ireland and Wales. By "general practice" is usually meant ordinary domiciliary practice in contrast to hospital practice or practice as a consultant or as a specialist. "Has had personal experience," that is, he need not be a general practitioner at the time of his appointment as a Commissioner, if he has previously been in general practice.

(2) The Insurance Commissioners may sue and be sued, and may for all purposes be described by that name, and shall have an official seal which shall be officially and judicially noticed, and such seal shall be authenticated by any Commissioner or the secretary to the Commissioners, or some person authorised by the Commissioners to act on behalf of the secretary.

(3) The Insurance Commissioners may appoint such officers, inspectors, referees, and servants, for the purposes of this Part of this Act as the Com-

missioners, subject to the approval of the Treasury as to number, may determine, and there shall be paid out of moneys provided by Parliament to the Commissioners and to such officers, inspectors, referees, and servants, such salaries or remuneration as the Treasury may determine; and any expenses incurred by the Treasury (including the remuneration of valuers and auditors appointed by the Treasury) or the Commissioners in carrying this Part of this Act into effect, to such extent as the Treasury may sanction, shall be defrayed out of moneys provided by Parliament. S. 57 (3)

"**Judicially noticed.**"—The seals of the Local Government Board and similar bodies and of other permanent statutory Commissioners are similarly privileged. See also 8 & 9 Vict., c. 113, s. 1.

"**Valuers and auditors appointed by the Treasury.**"—As to valuers of the accounts of approved societies see s. 36 (1); and as to valuation of the National Health Insurance Fund see s. 54 (5).

Accountants for the purposes of the National Health Insurance Fund and credits of approved societies therein are not appointed by the Treasury, but are the servants of the Commissioners [s. 56 (1)].

(4) Every document purporting to be an order or other instrument issued by the Insurance Commissioners and to be sealed with the seal of the Commissioners authenticated in manner provided by this section, or to be signed by the secretary to the Commissioners or any person authorised by the Commissioners to act on behalf of the secretary, shall be received in evidence and be deemed to be such order or instrument without further proof, unless the contrary is shown.

"**Order or other instrument.**"—These words do not include an ordinary business letter. In interpreting the words "deed, will, or other written instrument," in Order LIVa, r.1. of the Rules of the Supreme Court, Mr. Justice Stirling said: "It seems to me that the word 'instrument' was meant to receive a wide construction, and that it would apply to any written document under which any right or liability, whether legal or equitable, exists" (in *Mason* v. *Schuppisser*, 81 L.T. 147 at p. 148). So also Dr. Johnson: "a writing containing

S. 57 (4) — any contract or order"; and Webster: "a writing expressive of some act, contract, process, or proceeding," both cited and approved by Sir Henry Hawkins in *R.* v. *Riley* (1896), 1 Q.B. 309, at p. 314.

See the Statute, 8 & 9 Vict., c. 113, which largely covers the field of this section.

(5) The Insurance Commissioners may empower any inspector appointed by them to exercise in respect of any approved society or any branch of an approved society all or any of the powers given by section seventy-six of the Friendly Societies Act, 1896, to an inspector appointed thereunder:

Provided that any complaint or report as to any such branch as aforesaid made by an inspector under this subsection shall be communicated to the central body or other central authority of the society.

"**Inspector appointed by them.**"—Home Office inspectors and other Government inspectors acting under s. 112 (4) on behalf of the Insurance Commissioners will have no such power.

"**Powers given by . . . the Friendly Societies Act.**"—*i.e.*, to examine into and report on the affairs of a society. See 59 and 60 Vict., c. 25, s. 76. These powers can only be exercised upon the requisition of members of the society supported by evidence of the applicants' *bona fides*.

Appointment of Advisory Committee.

58.—The Insurance Commissioners shall, as soon as may be after the passing of this Act, appoint an Advisory Committee for the purpose of giving the Insurance Commissioners advice and assistance in connexion with the making and altering of regulations under this Part of this Act, consisting of representatives of associations of employers and approved societies, of duly qualified medical practitioners who have personal experience of general practice, and of such other persons as the Commissioners may appoint, of whom two at least shall be women.

See Appendix I, 17.

"**Have personal experience.**"—These words probably have the same meaning as "has had personal experience" in s. 57 (1), *q.v.*

Insurance Committees.

S. 59 — Appointment of Insurance Committees.

59.—(1) An Insurance Committee shall be constituted for every county and county borough.

"**County.**"—*i.e.*, administrative county (s. 79 *infra*). See the Local Government Act, 1888.

(2) Every such committee shall consist of such number of members as the Insurance Commissioners, having regard to the circumstances of each case, determine, but in no case less than forty or more than eighty, of whom—

(*a*) three-fifths shall be appointed in such manner as may be prescribed by regulations of the Insurance Commissioners so as to secure representation of the insured persons resident in the county or county borough who are members of approved societies, and who are deposit contributors, in proportion, as nearly as may be, to their respective numbers;

"**In proportion.**" — The proportion required is only between members of societies as a whole and deposit contributors as a whole, not between members of different societies, though doubtless in practice it will be so.

(*b*) one-fifth shall be appointed by the council of the county or county borough;

(*c*) two members shall be elected in manner provided by regulations made by the Insurance Commissioners, either by any association of duly qualified medical practitioners resident in the county or county borough which may have been formed for that purpose under such regulations, or, if no such association has been formed, by such practitioners;

S. 59 (2) (c)

"**Medical practitioners.**"—It will be seen that the Act provides that whatever the size of the local insurance committee may be, two medical practitioners shall be directly elected by the profession, and at least one more added by the Commissioners. In addition there are other practitioners to be chosen by the Councils, varying in number with the size of the committee [par. (*d*)]. Thus in a committee of 40 there must be at least four, in a committee of 60 or upwards at least five, and in a committee of 80 at least six medical practitioners. Medical practitioners who are on the list of practitioners entering into agreements with the committee to give medical attendance to the insured [s. 15 (2)] are not excluded from being members of the committee, but the representatives appointed need not themselves be on the list of medical practitioners referred to in s. 15 (2) *supra*, or indeed medical practitioners at all. Cf. s. 62 *infra*.

"**Formed for that purpose.**"—This would exclude branches of the British Medical Association, or any other medical society, which are formed for other purposes, from electing the medical members of the committee. It is suggested as a convenient arrangement that the regulations might recognise the local medical committee (s. 62) as being formed for this, among other purposes, especially as it is to be representative of all the practitioners in the area.

(*d*) one member or, if the total number of the committee is sixty or upwards, two members, or if the total number of the committee is eighty, three members, shall be duly qualified medical practitioners appointed by the council of the county or county borough;

The members so appointed will be in addition to those appointed under (*b*).

(*e*) the remaining members shall be appointed by the Insurance Commissioners:

Provided that—

(i) The regulations with respect to the appointment of members to represent insured persons shall provide for conferring on the approved societies which have members resident in the county or county borough the power of appointing the representatives of such members, and, where an association of the deposit contributors resident in the

county or county borough has been formed under such regulations as aforesaid, for conferring on such association the power of appointing the representatives of the deposit contributors ; S. 59 (2) (i.)

"**Conferring on the approved societies.**"—*i.e.*, on the central bodies of such societies, not necessarily on the members resident in the county or county borough.

(ii) Of the members appointed by the council of the county or county borough two at least shall be women, and of the members appointed by the Insurance Commissioners one at least shall be a duly qualified medical practitioner and two at least shall be women.

"**A duly qualified medical practitioner.**"—So that the representation of medical practitioners will vary from four to six according to the size of the committee.

(3) The Insurance Commissioners may, where any part of the cost of medical benefit or sanatorium benefit is defrayed by the council of the county or county borough, increase the representation of the council and make a corresponding diminution in the representation of the insured persons.

"**Is defrayed by the Council.**"—See ss. 15 (7), (8), 17 (2), (3) and 21 *supra*.

(4) The Insurance Commissioners may make regulations as to the appointment, quorum, term of office, and rotation of members and proceedings generally (including the appointment of sub-committees consisting wholly or partly of members of the committee) of the committee, and the employment of officers and the provision of offices

S. 59 (4) by the committee, including the use by the committee, with or without payment, of any offices of a local authority, but subject to the consent of such authority, and any such regulations may provide for the constitution of district insurance committees, and for apportioning amongst the several district insurance committees any of the powers and duties of the Insurance Committee and regulating the relations of district insurance committees to the Insurance Committee and to one another :

"**Local authority.**" Defined in the Public Health Act, 1875, s. 4, as an urban or rural sanitary authority, now urban or rural district councils (Local Government Act, 1894, s. 21), including the council of a borough and county borough, but not a metropolitan borough [London Government Act, 1899, s. 31 (1)]. No other authority is in any statute expressed to be included in this phrase, which does not therefore include a board of guardians, a parish council, or the council of a county other than a county borough, unless the phrase is to have a wider interpretation in this Act.

Provided that the regulations so made shall require the Insurance Committee of every county (except in cases where, owing to special circumstances, the Commissioners consider it unnecessary) within six months after the commencement of this Act to prepare after consultation with the county council and submit for approval to the Commissioners a scheme for the appointment of district insurance committees for the county and prescribing the area to be assigned to each such committee, and in particular the scheme shall provide for the appointment of a district insurance committee for each borough (including the City of London and a metropolitan borough) within the county having a population of not less than ten thousand, and for each urban district within the county with a population of not less than twenty thousand, but, if

the Insurance Committee or, on appeal, the Insurance Commissioners consider it expedient in the case of any such borough (outside London) or urban district, any adjoining areas may be grouped with such borough or urban district for the purpose of the appointment of a district insurance committee. S. 59 (4)

"**Each borough.**"—See s. 21 *supra.*

"**Adjoining areas.**"—Not necessarily existing local government areas, but rural districts are generally grouped round a borough or urban district.

(5) Any Insurance Committee may, and shall if so required by the Insurance Commissioners, combine with any one or more other Insurance Committees for all or any of the purposes of this Part of this Act, and, where they so combine, the provisions of this Part of this Act shall apply with such necessary adaptations as may be prescribed.

Powers and duties of Insurance Committees.

60.—(1) The Insurance Committee of a county or county borough shall, in addition to the other powers and duties conferred and imposed on it by this Part of this Act, have the following powers and duties :—

"**The other powers and duties.**"—Administration of medical benefit (s. 15), sanatorium benefit (ss. 16, 17), all benefits of "deposit contributors" (s. 42), and see also ss. 2 (2), 14, 21, 39 (4) (5) (7), 46 (3) (*f*) (*h*), 48 (12), 63.

(*a*) It shall make such reports as to the health of insured persons within the county or county borough as the Insurance Commissioners, after consultation with the Local Government Board, may prescribe, and shall furnish to them such statistical and other returns as they may require, and may make to them such other reports on

S. 60 (1) (*a*) —

the health of such persons and the conditions affecting the same, and may make such suggestions with regard thereto as it may think fit, and the Insurance Commissioners shall forward to the councils of the counties, boroughs, and urban and rural districts, which appear to them to be affected by or interested in any such reports, returns, or suggestions, copies of such reports, returns, and suggestions, and the reports and returns so made shall include such reports and returns as will enable an analysis and classification to be made of the persons who are deposit contributors :

"**Such reports as to the health of insured persons.**"—There is no provision in s. 15 (medical benefit), requiring the provision of reports upon their patients to be made part of the duty of medical practitioners with whom arrangements are made.

"**Deposit contributors.**"—S. 42 *supra*.

(*b*) It shall make such provision for the giving of lectures and the publication of information on questions relating to health as it thinks necessary or desirable: and may, if it thinks fit, for that purpose make arrangements with local education authorities, universities and other institutions.

"**Make such provision.**"—As to the funds for these purposes see s. 61 (2) *infra*.

(*c*) It shall keep proper books and accounts in the prescribed form and shall, when required, submit such accounts to audit by auditors appointed by the Treasury.

Cf. s. 35 (1) (*a*) *supra*, and Appendix I, 15 (*j*).

(2) For the purpose of assisting Insurance Committees in the exercise and performance of their powers and duties under this Part of this Act, and with a view to promoting co-operation between such committees and the councils of counties, boroughs, and urban and rural districts, any medical officer of health may, at the request of an Insurance Committee and with the consent of the council by whom he is appointed, attend meetings of the committee and give such advice and assistance as is in his power. S. 60 (2)

"Co-operation."—See Chapter V. *supra*, as to the relations between Public Health Authorities and Insurance Committees.

"Medical officer of health . . . the council."—See Local Government Act, 1888, ss. 17, 18; and Housing and Town Planning Act, 1909, s. 68, as to counties and county boroughs. Public Health Act, 1875, ss. 189–191, and Housing, &c., Act, 1909, s. 69, as to urban and rural districts; and Public Health (London) Act, 1891, s. 106, as to metropolitan boroughs. There is nothing in the Act to prevent a council appointing their medical officer as a representative on the Insurance Committee.

(3) For the purposes of this section the council of a borough includes the mayor, aldermen, and commons of the City of London in common council assembled, and the council of a metropolitan borough.

61.—(1) All sums available for sanatorium benefit in a county or county borough, and all sums payable in respect of the members of approved societies and deposit contributors resident in the county or county borough for the purposes of medical benefit and administrative expenses in any year, shall be paid or credited to the Insurance Committee at the commencement of that year. Income.

"Sums available for sanatorium benefit."—See ss. 16 (2), 17 (2) (3).

S. 61 (1) "Sums payable . . . medical benefit."—See ss. 15 (6), (7), (8), 42 (*d*).

"Administrative expenses."—S. 42 (*c*), where, however, the words are "in the administration of benefits"; this can hardly include the duties referred to in s. 60.

(2) There shall also be paid to the Insurance Committee in every year by each approved society having members who are insured persons resident in the county or county borough, in respect of each such member, the sum of one penny towards the administrative expenses of the committee:

The sums mentioned in this and the next succeeding subs. are apparently the only ones which will be available for the general expenses (apart from the actual administration of benefits), *e.g.*, the expenses mentioned in s. 60; see also note to s. 63 (5) *infra*.

Provided that, if the special circumstances of any county are such that the Insurance Commissioners consider that the travelling expenses of the members of the committee should be repaid to them by the committee, the Insurance Commissioners may authorise such repayment, and in such case may increase the said sum of one penny to such sum, not exceeding twopence, as they may determine.

(3) It shall be lawful for any local authority, out of any fund or rate out of which the expenses of the authority are payable, to subscribe such sums as it may think fit towards the general purposes of the Insurance Committee.

"Any local authority."—See note to s. 59 (4) *supra*.

"Any fund or rate."—As to county (and other) boroughs, see note to s. 15 (8) *supra*. As to urban districts, the Public Health Act, 1875, ss. 209, 210, and the Local Government Act, 1894, s. 28. And as to rural districts, the Public Health Act, 1875, s. 229, and the Local Government Act, 1894, s. 29.

"General purposes."—Including the benefits of deposit contributors and the administration thereof, in addition to the contributions to medical benefit under s. 15 (7) (8), and to sanatorium benefit under s. 17 (2) (3), as well as administrative expenses; cf. s. 12 (2) (*b*) for another source of revenue to this fund.

S. 62

Local medical committees.

62.—Where a local medical committee has been formed for any county or county borough or for any area for which a district committee has been formed and the Insurance Commissioners are satisfied that such committee is representative of the duly qualified medical practitioners resident in the county or county borough or such area as aforesaid, they shall recognise such committee, and, where a local medical committee has been so recognised, it shall, subject to regulations made by the Insurance Commissioners, be consulted by the Insurance Committee or district committee, as the case may be, on all general questions affecting the administration of medical benefit, including the arrangements made with medical practitioners giving attendance and treatment to insured persons, and shall perform such other duties, and shall exercise such powers, as may be determined by the Insurance Commissioners.

"**District committee.**"—See s. 59 (4).

"**Resident.**"—This qualification is not required in order to enable a practitioner to be placed on the list for the district, s. 15 (2) (*b*) *supra*.

"**Administration of medical benefit.**"—s. 15 *supra*.

This section was inserted on the suggestion of the British Medical Association. There is no statutory necessity that such a committee should be formed, but it is expected that in the interests of the profession the Association will take steps to see that such a committee is formed in every area and district in such a way as to satisfy the Commissioners. The only right (though it is an extremely important one to the medical profession), conferred by the Act on this committee, is the right to be consulted by the Insurance Committee on matters affecting the profession in its relation to the Act. No provision is made for meeting the expenses of the committee. See Appendix I, 16 (*d*).

Excessive Sickness.

Inquiries into causes of excessive sickness, &c.

63.—(1) Where it is alleged by the Insurance Commissioners or by any approved society or Insurance Committee that the sickness which has

S. 63 (1) taken place among any insured persons, being, in the case where the allegation is made by a society or committee persons for the administration of whose sickness and disablement benefits the society or committee is responsible, is excessive, and that such excess is due to the conditions or nature of employment of such persons, or to bad housing or insanitary conditions in any locality, or to an insufficient or contaminated water supply, or to the neglect on the part of any person or authority to observe or enforce the provisions of any Act relating to the health of workers in factories, workshops, mines, quarries, or other industries, or relating to public health, or the housing of the working classes, or any regulations made under any such Act, or to observe or enforce any public health precautions, the Commissioners or the society or committee making such allegation may send to the person or authority alleged to be in default a claim for the payment of the amount of any extra expenditure alleged to have been incurred by reason of such cause as aforesaid, and, if the Commissioners, society, or committee and such person or authority fail to arrive at any agreement on the subject, may apply to the Secretary of State or the Local Government Board, as the case may require, for an inquiry, and thereupon the Secretary of State or Local Government Board may appoint a competent person to hold an inquiry.

"Being in the case where . . . responsible."—See note to "any extra expenditure" *infra*.

"Nature of employment."—See, however, subss. (2) (*a*) and (4) *infra*.

"Neglect . . . to observe or enforce."—It is submitted that this does not enable any claim to be made in respect of the failure of

an authority to put in force any provisions which are merely permissive. S. 63 (1)

"**The provisions of any Act relating to the health of workers in factories, workshops . . .**"—See the Factories Act, 1901, ss. 1–22 especially, but no doubt a breach of other sections of that Act, if it resulted in injury to health, would be included; the Factory and Workshop Act, 1907; the Public Health Act, 1875, s. 91 (6); and the Public Health (London) Act, 1891, ss. 25–27, 38.

For the distinction between a factory and a workshop see the Act of 1901, s. 149, and Sixth Schedule.

"**Mines.**"—See the Metalliferous Mines Regulation Acts, 1872 and 1875; the Coal Mines, &c., Acts, 1887 and 1896; and the Mines Act, 1911. Every mine which is not within the latter Acts is within the former. As to the difference between a "mine" and a "quarry," see *Bell* v. *Wilson* (L.R. 1, Ch. 303); *A.-G., of Isle of Man* v. *Mylechreest* (4 App., cas. 294); *Lord Provost of Glasgow* v. *Farie* (13 App., cas. 657); *Midland Railway Co.* v. *Robinson* (15 App., cas. 19); *Todd, Birleston & Co.* v. *North Eastern Railway Co.* (1903, 1 K.B., 603).

"**Quarries.**"—See the Quarries Act, 1894, and the Factory and Workshop Act, 1901, as applied by the Sixth Schedule, Part II (26) of that Act.

"**Public health.**"—See the Public Health Acts, 1875, especially ss. 13-50, 91-111, 120-129 and 134-140, and 1890, especially ss. 16-27, and the Public Health (London) Act, 1891, especially ss. 1-18, 29-46, 55-74, 82 and 113. The contamination of water is specially dealt with by the Act of 1875, ss. 68-70, and that of 1891, ss. 50-54, 136.

The sale of unsound meat is dealt with by the Act of 1875, ss. 116-9, that of 1890, ss. 28-31, and that of 1891, s. 47; dairies are regulated by ss. 28 and 71 of the latter Act. See also the Sale of Food and Drugs Acts, 1875 and 1899.

There are of course numerous other Statutes which impose duties relating to public health.

"**Housing of the Working Classes.**"—See the Acts of 1890, 1900, 1903, and the Housing and Town Planning Act, 1909. Also the Public Health Acts, 1875, ss. 71-90, 91 (5), 97, 109; 1890, s. 33, and the Public Health (London) Act, 1891, ss. 63-5, 94-8.

Part I of the Housing, &c., Act, 1890, relating to the clearing of unhealthy areas, and re-housing of persons displaced, is mandatory, although the loop-holes for escape by a local authority are numerous. As to the duty to make a scheme for that purpose, see s. 4, now strengthened by s. 4 of the Act of 1903, and s. 11 of that of 1909; and as to the duty of carrying it into effect when made, see ss. 12 and 13, and s. 11 of the Act of 1909.

To Part II of the Act of 1890, which deals with unhealthy or obstructive buildings, closing and demolition orders, and reconstruction schemes for small areas, the same remarks apply: see ss. 32-4, 38 (3), (4), and 39 of the Act of 1890, s. 4 of the Act of 1903 and ss. 10 (1), 11, 15 (3), 17, 18 of that of 1909.

Part III, relating to the erection of houses for the working classes, apart from the reconstruction of unhealthy areas, is purely permissive: until the Act of 1909 it was also adoptive (s. 1). But s. 10 of that Act enables the Local Government Board to declare a local authority

S. 63 (1) which has failed to exercise its powers "in default," and may order either that authority, or in the case of an urban or rural district, the county council, to exercise them. Disobedience to such an order would render the council amenable to the provisions of this section.

There are also duties with regard to housing imposed upon persons other than local authorities: (1) upon medical officers of health, by ss. 5, 16, 30, 31, 38, 76, 79, of the Act of 1890, and s. 17 (1), (2) of the Act of 1909: such an officer would doubtless be personally liable under this section for neglect of those duties.

(2) Upon any authority, company, or person who under statutory powers for the acquisition of land displaces working men's dwellings, to provide rehousing accommodation, by many private Acts, and generally by s. 3 and the Schedule of the Act of 1903.

(3) Upon the owner of a house as to which a demolition order has been made by s. 34 (1) of the Act of 1890. By ss. 14 and 15 of the Act of 1909 the letting of a house at a rent not exceeding £40 in London, £26 in a borough or urban district with 50,000 inhabitants, and £16 elsewhere, is subject to an implied condition that it is, and shall throughout the holding be, in all respects reasonably fit for human habitation. See also s. 75 of the Act of 1890 and s. 12 of that of 1903, which forbids contracting out of the provisions of s. 75, but does not apply to those of the Act of 1909. There is no such implied condition or warranty at common law, except in the case of a house let furnished, and then it applies only to the commencement of the tenancy (*Wilson* v. *Finch Hatton*, 2 Ex. D. 336).

The Small Holdings and Allotments Act, 1907, confers upon county and parish councils the power but not the duty to erect upon small holdings and allotments respectively acquired by them dwellings for occupation in connection therewith [(ss. 7, 11, 21 (2)].

"**Any public health precautions.**"—It is submitted that this can only mean "any precautions the duty of observing which is imposed by law," and in view of the previous reference to statutory duties, it must mean "by the common law." "Every person is guilty of a misdemeanour at common law, known as common nuisance, who does an act not warranted by law, or omits to discharge a legal duty, if the effect of the act or omission is to endanger the life or health . . . of the public." Archbold Cr. Pl. 23rd Ed. p. 1121, citing 2 Chit. Cr. Law. 565, 1 Hawk. c. 75, *Hubert* v. *Groves*, 1 Esp. 147, *Wilkes* v. *Hungerford Market Co.* 2 Bing. N.C. 281. Thus it is indictable: to expose in the public streets any person or animal suffering from an infectious disease (*R.* v. *Vantandillo*, 4 M. and S. 73; *R.* v. *Henson*, Dears. 24; *R.* v. *Burnett*, 4 M. and S. 272; *Metropolitan Asylum District* v. *Hill*, 6 App. Cas. 193 at p. 204, where Lord Blackburn explains what might be a lawful excuse for such an act); to pollute water (*R.* v. *Medley*, 6 C. and P. 292); to keep a corpse unburied (*R.* v. *Vann*, 2 Den. 331); to sell food unfit for human consumption (*R.* v. *Dixon*, 3 M. and S. 11; *R.* v. *Dennis*, 1894, 2 Q.B. 458; *Shillito* v. *Thompson*, 1 Q.B.D. 12; if death results it is manslaughter; *R.* v. *Stevenson*, 2 F. and F. 106; *R.* v. *Kempson*, 28 L.J. Newsp. 477).

Whether a breach of the statutory and common law duties referred to in this subsection will in every case confer a right of action upon any person injured in health thereby against the person or authority in default, is a question of much difficulty. In the case of the sale of

unsound food there is usually an action for breach of warranty arising in contract, if not also an action in tort. The breach of any of these common law duties gives rise to an action for damages at the suit of any person injured thereby, and this is not taken away because a penalty is imposed by statute for the same breach. But in the case of breach of a duty which is statutory only if a penalty is attached to the offence no action will lie, if not it will (see Beven on Negligence, Book II, Ch. 3 and *Harrington* v. *Derby Corporation*, 1905. 1 Ch. 205 at p. 222 et seq. and cases there cited).

S. 63 (1) —

"**The amount.**"—See note on "such excess" under the next subsection.

"**Any extra expenditure.**"—Including apparently expenditure on benefits other than sickness and disablement benefits [see subs. (7) *infra*] in spite of the words "persons for the administration of whose sickness and disablement benefits the society or committee is responsible" *supra*. In the case of members of approved societies it will apparently be necessary in view of those words, if it is sought to recover expenditure on benefits other than these, either for the claim to be made by the Insurance Commissioners, or for the society and committee to combine for the purpose.

"**Fail to arrive at any agreement.**"—No period is mentioned within which a decision is to be reached, but the inquiry will presumably not be ordered unless there has been a genuine but unsuccessful attempt.

"**As the case may require.**"—Presumably this means that the application is to be made to the department concerned with the administration of the statute (if any) under which the claim is alleged to arise. This is the Secretary of State in the case of the Factory and Workshop Acts, the Metalliferous Mines Acts, the Coal Mines Regulation Acts, the Quarries Act; and the Local Government Board in the case of the Public Health Acts, and the Housing of the Working Classes Acts. But in the case of the common law duties referred to above, and perhaps also of some statutory duties which may be within the terms of this subsection, there is no provision for any inquiry to be held by either of these departments, and it is not clear to whom the application is to be made.

"**Competent person.**"—There is no special qualification mentioned in any of the statutes referred to.

(2) If upon such inquiry being held, it is proved to the satisfaction of the person holding the inquiry that the amount of such sickness has—

(i) during a period of not less than three years before the date of the inquiry; or

(ii) if there has been an outbreak of any epidemic, endemic or infectious disease, during any less period;

S. 63 (2) "**Epidemic, endemic, or infectious disease.**"—The phrase is that used in the Public Health Acts. By "infectious" disease is meant a disease which is communicable, whether it be directly by inoculation (contagious), or indirectly by air-borne or water-borne causes. An epidemic disease is one which "falls as it were suddenly upon a people, generally spreads widely and rapidly, though its prevalence is often of limited duration." (Bristowe's *Medicine*.) Endemic diseases are those "habitually present in certain localities, and which, when external conditions are favourable, give rise to sudden and widespread dissemination, which is then termed an epidemic." (Parkes *Hygiene*.) *E.g.*, influenza is an infectious disease which is now endemic in England and often becomes epidemic.

"**Period.**"—A question arises as to the application of the Public Authorities Protection Act, 1893, s. 1 (*a*):—

"The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof."

It applies to "any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution" the rest. Although an inquiry under this section is not an "action" or "prosecution," it is doubtless a "proceeding"; see that word used in subs. (9) *infra*. It is in a "proceeding," when is it "commenced"? Presumably when the application is made for an inquiry. It might be argued that it is "commenced" when the claim for payment is made; but as to this see the Act of 1893, s. 1 (*b*). The majority of cases under this section would involve "a continuance of injury or damage." These words do not mean or refer to a damage indicted once for all which continues unrepaired, but a new damage recurring day by day in respect of an act done, it may be, once and for all at some prior time, or repeated, it may be, from day to day (*Harrington* v. *Derby Corporation*, 1905, 1 Ch. 205 at p. 227).

been in excess of the average expectation of sickness by more than ten per cent., and that such excess was in whole or in part due to any such cause as aforesaid, the amount of any extra expenditure found by the person holding the inquiry to have been incurred under this Part of this Act by any societies or committees where the allegation is made by the Insurance Commissioners, or, if the allegation is made by a society or committee, by the society or committee in question, by reason of such cause shall be ordered by him to be made good in accordance with the following provisions:—

"**The average expectation.**"—See subs. (4) *infra*.

S. 63 (2)

"Such excess . . . any extra expenditure."—The amount which may be recovered is the whole excess, not merely such part as is over ten per cent.

"In whole or in part."—The excess may be divided up, and part of it allocated to any one or more of the causes above mentioned, the expenditure being allocated in the same proportion as aforesaid. [See subs. (1) and notes.]

(*a*) Where the excess or such part thereof as aforesaid is due to the conditions or nature of the employment or to any neglect on the part of any employer to observe or enforce any such Act or regulation as aforesaid, it shall be made good by the employer:

"Conditions or nature."—Subject to subs. (4) *infra*. The liability imposed by these words is irrespective of any default on the part of the employer. It would cover cases of accident for which no compensation or damages are payable for any reason. In fact, where there is such default the employer would be liable at common law [subs. (4)] unless the workman knew of, and consented to accept, the risk (*Smith* v. *Baker*, 1891, A.C. 325), and the liability under this section would be excluded. The case is the same, and the common law liability more difficult to escape, where the injury or disease is due to breach of the employer's statutory duty (*Britton* v. *G.W. Cotton Co.*, 41 L.J. Ex. 99; *Thomas* v. *Quartermaine*, 18 Q.B.D. at p. 696; *Butler* v. *Fife Coal Co.*, 28 T.L.R.).

(*b*) Where such excess or such part thereof as aforesaid is due to bad housing or insanitary conditions in the locality, or to any neglect on the part of any local authority to observe or enforce any such Act or regulation or such precautions as aforesaid, it shall be made good by such local authority as appears to the person holding the inquiry to have been in default, or, if due to the insanitary condition of any particular premises, shall be made good either by such authority or by the owner, lessee, or occupier of the premises who is

S. 63 (2) (b)

proved to the satisfaction of the person holding the inquiry to be responsible :

"**Or to any neglect . . . in default.**"—Unless it is due to any neglect, it is difficult to see how the authority can be "in default," so that it is not clear what independent meaning is to be attached to the words "due to bad housing or insanitary conditions in the locality." However, such conditions in a locality could hardly exist without some neglect of statutory duty by the authority.

"**Or by the owner, lessee, or occupier.**"—Subject to the authority having taken the steps provided in subs. (3) *infra*, or to a claim having been sent to him under subs. (1) *supra*.

"**To be responsible.**"—It cannot be a condition precedent to such responsibility that the owner, etc., should have been served with, and failed to comply with, a notice under the Public Health or Housing Acts, requiring him to remedy the insanitary conditions; it will be sufficient if he has been liable to be so served.

(*c*) Where the excess or such part thereof as aforesaid is due to an insufficient or contaminated water supply, it shall be made good by the local authority, company, or person by whom the water is supplied, or who having imposed upon them the duty of affording a water supply have refused or neglected to do so, unless the local authority, company, or person prove that such insufficiency or contamination was not due to any default on the part of the authority, company, or person, but arose from circumstances over which they had no control.

"**Insufficient.**"—Where a company or authority obtains by a special Act power to supply water, the provisions of the Waterworks Clauses Acts, 1847 and 1863, are usually incorporated therewith. Ss. 35–53 of the former and 12–15 of the latter regulate the supply which the undertakers are required to provide. They are bound to connect any dwelling-house within their limits of the annual value of less than £10, and the owner or occupier of any other such house may connect it with the mains; the undertakers are then required, under penalties, to keep a constant supply at a pressure sufficient to reach the top storey of the highest house within their limits (with an exception for frost, unusual drought, or other unavoidable cause or accident). They are also bound to provide a sufficient supply for cleansing

sewers, drains, streets, for public pumps, baths and wash-houses, and for extinguishing fires; but, subject to the local Act, not for other purposes. S. 63 (3) (c)

The powers of a local authority to undertake a supply of water are contained in ss. 51–67 of the Public Health Act, 1875 (urban and rural district councils), the Local Government Act, 1894, s. 8 (1) (*e*) (parish councils). There is no obligation upon them to do so, unless they are declared by the Local Government Board to be in default under s. 299 of the Act of 1875, or by the county council upon the application of the parish council, under s. 16 of the Act of 1894. But where they do undertake such a supply they are required to maintain it (s. 55 of the Act of 1875, substituted for ss. 35–43 of the Act of 1847), and the provisions of the Act of 1847 (ss. 44–53), relating to the connection of houses to the mains, are incorporated. As to the Metropolitan area, see the Metropolis (Water) Act, 1902, and ss. 48–53 of the Public Health (London Act), 1891.

"**Contaminated.**"—The water supplied is required, by s. 35 of the Act of 1847 and s. 55 of that of 1875, to be "pure and wholesome" (see also s. 25 of the Act of 1902). Ss. 61–67 of the Act of 1847, ss. 68–70, of that of 1875, and ss. 50–54, and 136 of that of 1891, provide against contamination by persons other than the undertakers, but this section does not appear to give any remedy against them, unless it may arise in a particular case from the concluding words of (*b*) *supra*.

"**Duty.**"—See note to "insufficient," the special Act authorising a person to supply water may of course confer upon it duties other than those contained in the general Acts.

(3) Where any such inquiry as aforesaid is held in respect of bad housing or insanitary conditions in any locality, it shall be lawful for the local authority to serve notice upon the owner, lessee, or occupier of any premises which are the subject-matter of the inquiry, and, where it is proved that such a notice has been served and that any such extra expense as aforesaid, or any part thereof, has been caused by the act or default of such owner, lessee or occupier, the person holding the inquiry may order the owner, lessee, or occupier to repay to the local authority the amount of the extra expenditure or part thereof which has been so caused.

"**To serve notice.**"—In such a case the owner, etc., would be entitled to be heard in the inquiry, although no claim has been made against him under subs. (1), and could be awarded his costs against the authority under subs. (5).

"**To repay.**"—This procedure is alternative to that in subs. (2) (*b*).

S 63 (4)

(4) For the purpose of this section, the average expectation of sickness shall be calculated in accordance with the tables prepared by the Insurance Commissioners for the purpose of valuations under this part of this Act, but any excessive sickness attributable to any disease or disablement which is due to any disease or injury in respect of which damages or compensation are payable under the Employers' Liability Act, 1880, or the Workmen's Compensation Act, 1906, or at common law, shall not be taken into account.

"**Valuations.**"—See s. 36 *supra*.

"**Disease or disablement.**"—See ss. 79 *infra* and 8 (1) (*c*) *supra*.

"**Damages or compensation.**"—See notes to s. 11 (1) *supra*, the wording of which is almost (though unfortunately not quite) the same. The words "or any scheme certified thereunder" are here omitted, and as s. 3 (1) of the Workmen's Compensation Act, 1906, gives no remedy to the workman other than that which he may have under the contract which the employer is permitted to make with him, it is doubtful whether such a scheme can be included here by implication, except perhaps by reference to that section. But probably the words "at common law" include such a case, since the remedy is not really statutory.

"**Payable.**"—This word is difficult. Apparently the person or authority against whom the claim is made may allege in defence that although no proceedings have been taken against them under s. 11, they ought to have been, and would have been successful. The effect is to make unsuccessful proceedings under that section (in cases to which it may apply) almost a condition precedent to its proceedings under this section.

"**At common law.**"—If this subsection stood alone it might well be argued that the *ejusdem generis* rule would apply, and that this would include only cases where damages are recoverable from an employer. But as the words "from his employer or any other person" are found in s. 11 (1) *supra*, they must probably be implied here. The intention clearly is that no sickness shall be taken into account for which no benefit has become payable, and that the defaulter shall not be made to pay twice. Any damages or compensation recoverable under any statute other than those named are however not within this subsection.

(5) The Insurance Commissioners shall make regulations as to the procedure on inquiries under this section, and a person holding an inquiry under

this section shall have all such powers as an inspector of the Local Government Board has for the purposes of an inquiry under the Public Health Acts, and shall have power to order how and by what parties costs, including such expenses as the Secretary of State or Local Government Board may certify to have been incurred by them, are to be paid, and an order made by such person under this section may by leave of the High Court be enforced in the same manner as a judgment or order of the Court to the same effect: S. 63 (5)

"**All such powers . . . Public Health Acts.**"—See the Act of 1875, s. 296, which gives to such an inspector the powers of a poor law inspector under the Acts relating to the relief of the poor, as to which see 10 and 11 Vict. c. 109, ss. 11, 19–22, and 26. The powers enable an inspector to require any person to give evidence on oath (with the penalties of perjury), provided he does not have to travel more than ten miles for the purpose, or to make a statutory declaration, and to produce all documents, plans, etc., except documents of title to lands which are not the property of any parish or union.

A serious question arises as to whether such an inquiry is governed by the Arbitration Act, 1889. By s. 24 of that Act it is made applicable to "every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorised or recognised by that Act." An arbitration has been thus defined: "a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties" (per Romilly, M.R., *Collins* v. *Collins*, 28 L.J., Ch. 184). The essential qualities of an arbitration appear to be that there shall be a difference, and that that difference shall be referred for decision, whether before or after it arises, and whether compulsorily (cf. the Judicature Act, 1884, s. 8) or by consent, to some person or persons independently of the ordinary courts of law (see *Thomson* v. *Anderson*, L.R. 9, Eq. 523, per Malins, V.C. at p. 531; *Wadsworth* v. *Smith*, L.R. 6 Q.B. 332).

Here we have a difference ("if the Commissioners . . . fail to arrive at any agreement," subs. (1) *supra*), which is to be decided by the "competent person" mentioned in subs. (1). The principal importance of the question is that by s. 7 (*b*) of the Arbitration Act, the arbitrator may state his award in the form of a special case for the opinion of the court, and by s. 19 he may be required by the court to state a case at any stage of the reference on any question of law. It is clear that such questions may easily arise under this section.

As to the meaning of "inconsistent," in s. 24 of the Arbitration Act, see *Tabernacle Permanent Building Society* v. *Knight*, 1892, A.C. 298.

S. 63 (5) — Inquiries under this section differ from most of those to which ss. 293-6 of the Public Health Act, 1875, apply, in that the latter are held for the information of the authority which orders them, and which retains the final decision in its own hands; here the person holding the inquiry himself decides the matter in dispute, [cf. s. 80 (11)]. It was apparently, for instance, the view of the court (though not actually decided) in *Kent C.C.* v. *Sandgate Local Board*, 1895, 2 Q.B. 43, that the Arbitration Act does not apply to inquiries under s. 87 of the Local Government Act, 1888. Note also that ss. 293-5 of the Public Health Act, 1875, do not apply here. Cf. ss. 66, 67, 88, 91 (1) *b*, 101 (6) *infra*, and note that in ss. 67 (4) and 88 (3) it is contemplated that but for those provisions, the Arbitration Act would apply to proceedings under those sections.

"**Costs.**"—See the Arbitration Act, 1889, s. 20, and the first Schedule (i) to that Act.

"**May certify.**"—Such a certificate could not be questioned on taxation.

"**May by leave . . . . to the same effect.**"—Cf. the Arbitration Act, 1889, s. 12. The court will not, on such an application, re-open the whole matter, nor will it grant the application if there is a *bonâ-fide* intention to take proper steps see [ss. 10 (1) and 11 (2) of that Act] to question the order, nor if there is any doubt as to whether it is valid or binding (see *In re Stone and Hastie*, 1903, 2 K.B. 463.) The practice is similar to that under O. 14; the court cannot order judgment to be entered, therefore no bankruptcy notice can be issued (1907, 1 K.B. 478).

Provided that a society or committee shall not be ordered to pay the costs of the other party to the inquiry if the person holding the inquiry certifies that the demand for an inquiry was reasonable under the circumstances, and, when he so certifies, the Treasury may repay to the society or committee the whole or any part of the costs incurred by it.

The fund out of which a society or committee would be obliged to pay any costs falling upon them is apparently that allowed for administration; see ss. 35 (2), 54 (1), and 61 *supra*. If that is insufficient an approved society would have to make a special levy under s. 35 (2), but it is not clear what an Insurance Committee could do, as the source of revenue mentioned in s. 61 (3) would probably not be available.

(6) Without prejudice to any other method of recovery, any sum ordered under this section to be paid by a local authority may, in accordance with the regulations of the Local Government Board

with the appproval of the Treasury, be paid out of the Local Taxation Account and deducted from any sums payable either directly or indirectly out of that account to the local authority. S. 63 (6)

"**Deducted.**"—Cf. Local Government Act, 1888, s. 27.

"**Directly.**"—See Local Government Act, 1888, ss. 20–22.

"**Indirectly.**"—See Local Government Act, 1888, ss. 23 (2) (ii), 24.

(7) For the purposes of this section, any expenditure on any benefit administered by an Insurance Committee shall be deemed to be expenditure of that Committee, but any sums paid to any such Committee under this section to meet extra expenditure on sickness benefit or disablement benefit shall be dealt with for the benefit of deposit contributors in accordance with regulations made by the Insurance Commissioners.

"**Any benefit administered.**"—See ss. 15, 16, 17 and 42 *supra*. See note to "any extra expenditure," under subs. (1) *supra*. Any sums ordered to be paid to a committee to meet extra expenditure on medical and sanatorium benefits, would be paid by them to the funds provided for that purpose (in respect of all the insured persons resident in their area) under ss. 15 (6), 16 (2) and 42 (*d*) (*e*).

(8) Where under this section any sum is paid to the Insurance Commissioners, the Insurance Commissioners shall apply the same in discharge of any expenses incurred by the Commissioners under this section and shall distribute the balance amongst the societies and committees which appear to the Commissioners to have incurred extra expense on account of the excessive sickness in such proportions as the Commissioners think just.

"**Any expenses incurred.**"—Over and above any costs ordered to be paid to them under subs. (5) *supra*.

(9) Where an association of deposit contributors resident in any county or county borough has been

S. 63 (9) formed under regulations made by the Insurance Commissioners, the Insurance Committee for the county or county borough shall, if so required by the association, take proceedings under this section on behalf and at the expense of the association.

"At the expense."—It is not clear from what source such an association would derive any funds for this or any other purpose, except from voluntary contributions.

Supplementary Provisions.

Provision of sanatoria, &c.

64.—(1) If under any other Act of the present session any sum is made available for the purposes of the provision of or making grants in aid to sanatoria and other institutions for the treatment of tuberculosis or such other diseases as the Local Government Board with the approval of the Treasury may appoint, such sum shall be distributed by the Local Government Board with the consent of the Treasury in making grants for those purposes, and the Treasury before giving their consent shall consult with the Insurance Commissioners :

Provided that such sum shall be apportioned between England, Wales, Scotland, and Ireland in proportion to their respective populations ascertained in accordance with the returns of the census taken in the year nineteen hundred and eleven.

"If under any other Act of the present session any sum."—By the Finance Act, 1911, s. 16 (1) (*b*), the sum of £1,500,000 is set apart for this purpose.

(2) If any such grant is made to a county council, the Local Government Board may authorise the county council to provide any such institution, and, where so authorised, the county council shall have power to erect buildings and to manage and main-

tain the institution and for that purpose to enter into agreements and make arrangements with the Insurance Committees and other authorities and persons, and to do all such things as may be necessary for the purposes aforesaid, and any expenses of the county council, so far as not defrayed out of the grant, shall be defrayed out of the county fund as expenses for general county purposes, or, if the order of the Local Government Board so directs, as expenses for special county purposes charged on such part of the county as may be provided by the order.

S. 64 (2)

"Agreements . . . . with local Insurance Committee."—See s. 16 (1) *supra*.

"General county expenses . . . . . special county expenses."—See Local Government Act, 1888, s. 68.

(3) For the purpose of facilitating co-operation amongst county councils, county borough councils, and other local authorities (not being Poor Law authorities) for the provision of such sanatoria and other institutions as aforesaid, the Local Government Board may by order make such provisions as appear to them necessary or expedient, by the constitution of joint committees, joint boards, or otherwise, for the joint exercise by such councils and authorities of their powers in relation thereto, and any such order may provide how, in what proportions, and out of what funds or rates the expenses of providing such institutions, so far as they are not defrayed out of grants under this section, are to be defrayed, and may contain such consequential, incidental, and supplemental provisions as may appear necessary for the purposes of the order, and an order so made shall be binding and conclusive in respect of the matters to which it relates.

S. 64 (4)

(4) An Insurance Committee may, with the consent of the Insurance Commissioners, enter into agreements with any person or authority (other than a Poor Law authority) that, in consideraton of such person or authority providing treatment in a sanatorium or other institution or otherwise for persons recommended by the Committee for sanatorium benefit, the Committee will contribute out of the funds available for sanatorium benefit towards the maintenance of the institution or provision of such treatment, such annual or other payment, and subject to such conditions and for such period as may be agreed, and any such agreement shall be binding on the Committee and their successors, and any sums payable by the Committee thereunder may be paid by the Insurance Commissioners and deducted from the sums payable to the Committee for the purposes of sanatorium benefit.

"**The sums payable.**"—See ss. 16 (2) and 17 (3) *supra.*

Power to Insurance Commissioners to make regulations, &c.

65.—The Insurance Commissioners may make regulations for any of the purposes for which regulations may be made under this Part of this Act or the schedules therein referred to, and for prescribing anything which under this Part of this Act or any such schedules is to be prescribed, and generally for carrying this Part of this Act into effect, and any regulations so made shall be laid before both Houses of Parliament as soon as may be after they are made, and shall have effect as if enacted in this Act :

"**The purposes for which regulations may be made . . . . anything . . . . which is to be prescribed.**"—The following are the subjects specifically referred to :

Claims for exemption [s. 2 (2)].

† Intervals at which contributions are to be paid [ss. 4 (1), 5 (1)].

† Payment of contributions where there is more than one employer in the week [the Third Schedule (5) under s. 4 (2)].

† Payment of contributions where employed contributors work under some person other than the immediate employer [*ib.* (6)].

† Rates of contribution for outworkers [*ib.* (10)].

† The application of employers' contributions where the employed person is exempt [s. 4 (4)].

Manner in which a voluntary contributor is to give notice of desire to be transferred to employed rate [s. 6 (1)].

† Matters incidental to the payment and collection of contributions (s. 7).

The medical and surgical appliances to be provided [s. 8 (1) (*a*)].

* Application and calculation of sums standing to the credit of members of approved societies suspended [s. 10 (1)].

* Reduction of benefits for voluntary contributors in arrear [s. 10 (3)].

* Calculation of average arrears [s. 10 (7)].

The notice to be sent to the Commissioners as to agreements and redemption of payments under the Workmen's Compensation Act, 1906 [s. 11 (1) (*c*)].

Form of rules of approved societies relating to behaviour during disease or disablement [s. 14 (2) (*d*)].

† Arrangements with medical practitioners [s. 15 (1–4).]

† Arrangements for the supply of drugs, &c. [s. 15 (5)].

Retention of Parliamentary grant for research [s. 16 (2)].

Payment of fee of a doctor called by a midwife to a confinement [s. 18 (1) proviso].

Subscriptions to hospitals, &c. (s. 21).

* The constitution of an unregistered society [s. 23 (1)].

Place of meeting of approved societies [s. 27 (2)].

Dissolution of approved societies [s. 28 (2)].

* Transfer of members leaving the country to funds of society independent of the Act (s. 33).

* Form of accounts of approved societies [s. 35 (1) (*a*)].

Limit of expenditure on administration by approved societies [s. 35 (2)].

* Basis of valuation [s. 36 (2)].

Notice to employer of levy [s. 38 (1) (*c*)].

* Calculation of capitalised value of levy, &c. [s. 38 (2)].

Conditions for joining and seceding from an association of societies [s. 39 (2)].

* Time for joining an approved society [ss. 42, 43 (1)].

Sum to be paid in respect of deposit contributors for administration [s. 42 (*c*)].

Adaptation of Friendly Societies Act, 1896, ss. 56–61 to deposit contributors [s. 42 (*f*)].

* The transfer value of a person who leaves an approved society and does not become a deposit contributor [s. 43 (1) (*b*)].

* = *To be exercised only by the Joint Committee* (*s.* 83). *See Appendix I.*

† = *To be exercised jointly by the Joint Committee and each body of Commissioners.*

*† = *To be exercised by the Joint Committee alone, in cases of societies with members in more than one country.*

S. 65 — * Benefits of a married woman suspended from ordinary benefits who becomes employed before the death of her husband [s. 44 (1)].

Benefits of a married woman who does not become a voluntary contributor [s. 44 (2) (4) and the Fourth Schedule, Part III].

Sum to be written off reserve value of such a womam (*ib.*).

* Calculation of transfer value of married women [s. 44 (10)].

* Deficiency and arrears in relation to married women [s. 44 (12)].

* Sum to be contributed by Admiralty and Army Council in respect of seamen, marines and soldiers [s. 46 (1)].

Time for such men as re-engage for pension to elect to be insured (*ib.*, proviso).

Time for seamen, marines and soldiers to join approved societies after discharge [s. 46 (2) (*b*), (3) (*g*)].

Provision for such a man unable to enter an approved society [*ib.* (*h*)].

* Calculation of Parliamentary grant to Navy and Army Insurance Fund [*ib.* (3) (*b*)].

Adaptation of s. 46 to Naval and Army Reserve and Territorial force [*ib.* (7)].

Notice by employer desirous of contributing on reduced scale [s. 47 (2)].

Notice of disease or disablement in such a case [*ib.* (4) (*e*)].

* Modifications as to medical and sanatorium benefit for merchant seamen [s. 48 (12)].

* Payment in respect of exempted inmates of charitable homes [s. 51 (1) (*b*)]

* Payment by society to Board of Education in respect of elementary school teachers (s. 52).

* Rate of interest on Post Office and Navy and Army Insurance Funds [s. 54 (4)].

* Credits, debits, and payments between societies and the Commissioners [s. 56 (1)].

Rate of interest on sums standing to the credit of societies in the investment account [*ib.* (*c*)].

* Application of interest or dividends by societies [*ib.* (4)].

Appointment of representatives of insured persons on Insurance Committees [s. 59 (2), (*a*), (*i*) and (3)].

And of medical practitioners [*ib.* (*c*)].

Associations of deposit contributors [ss. 59 (2) (i) and 63 (9)].

Proceedings of Committees [*ib.* (4)].

District insurance committees (*ib.* proviso).

Reports to be made by Committees [s. 60 (1) (*a*)].

* Form of accounts of Insurance Committees [*ib.* (*c*)].

† Local Medical Committees (s. 62).

Procedure on inquiries as to excessive sickness [s. 63 (5)].

Allocation of sums recovered by Insurance Committees in such inquiries [*ib.* (7)].

Determination of questions (s. 66).

Decision of disputes [s. 67 (4)].

Constitution of an Insurance Committee for the Scilly Isles (s. 79).

The certificate to be produced by an inspector [s. 112 (5)].

In addition to the above matters as to which the Commissioners are to make regulations or prescribe, they are to **prepare tables** as to :—

* The voluntary rate of contributions [s. 5 (1) and proviso].

* Reduced sickness benefit of voluntary contributors who become employed contributors and elect to pay at the employed rate [s. 6 (2)].

* Reduced benefit of persons entering insurance when of the age of seventeen or upwards, more than one year after the commencement of this Act [s. 9 (4)].

* Transfer values [s. 31 (1)].

* Reserve values of widows [s. 44, (1) (3)].

* Reserve values generally [s. 55 (1)].

Valuations [s. 63 (4), cf. s. 36].

They are also to **give certificates** as to :—

† The provision for benefits in the case of persons employed under the Crown, local or public authorities [the First Schedule, Part II (*b*) under s. 1 (2)], and under railway and other statutory companies [*ib.* (*c*)].

Exemption of pensioners and persons dependent on others [s. 2 (2)].

Exemption of employers' funds from obligation to be "grouped" [s. 39 (7)].

Exemption of married voluntary contributors who become employed [s. 44 (8)].

Exemption of charitable homes, etc. [s. 51 (1)].

† Valuation of employers' superannuation funds [s. 73 (2)].

They are also to **confirm schemes** :—

† For substitution of additional for sickness and disablement benefits (s. 13).

Alteration in the constitution of employers' superannuation funds for approval [s. 25 (2), (3)].

† Disposal of surplus on valuation [s. 37 (1) (*a*) (*c*)].

† Making good deficiency by a society or a branch [s. 38 (1) (*b*) (*e*)].

* Additional benefits for members of the Seamen's National Insurance Society [s. 48 (7)].

*† The following matters (in addition to the approval of societies under ss. 23–29), are also to be subject to their "**consent**," "**approval**," "**opinion**," "**satisfaction**," "**sanction**," etc.

The rate of remuneration for part-time service to be deemed equivalent to a full rate of £160 a year (the First Schedule, Part II (*g*) under s. 1 (2).

† The reduction of sickness and disablement benefits where they exceed two-thirds of the usual rate of remuneration [s. 9 (2)].

Rules of approved societies [s. 14 (2)].

Rules of Insurance Committees [s. 14 (3)].

Additional expenditure on medical benefit [s. 15 (7)], and sanatorium benefit [s. 17 (2)].

Arrangements for sanatorium benefit [s. 16 (1)].

*† The conditions for approval of societies (s. 23), and employers' funds (s. 25).

*† Security to be given by societies (s. 26).

*† The government of societies and branches [s. 27 (1)].

*† Secession from societies [s. 28 (1)].

*† Dissolution of societies [*ib.* (2)].

*† Provision for members of branches expelled [*ib.* (3)].

*† Withdrawal of approval (s. 29).

* Approval of foreign and colonial societies and arrangements for transfer (s. 32).

The refusal of a society to make good the deficiency of a branch [s. 38 (1) (*a*)].

† The formation of an association of societies [s. 39 (2)].

† The amount payable in respect of deposit contributors for medical benefit [s. 42 (*d*)].

S. 65 — † Securities in which societies may invest [s. 56 (2)].

The distribution of grants for sanatoria (s. 64 (1)].

Agreements by Insurance Committees for sanatorium treatment [*ib.* (4)].

They may also **determine** the contribution of approved societies to Insurance Committees for medical benefits [s. 15 (6)].

The proportion of surplus or deficiency of a grouped society to be allocated to any county [s. 39 (6)].

Manner of discharging debits of societies [s. 56 (1) (*d*)].

The number of members of Insurance Committees [s. 59 (2)].

Whether the travelling expenses of such members should be paid [s. 61 (2)].

Questions as to persons compulsorily insured and rates of contributions (s. 66).

They may also **require** :

Accounts of approved societies to be audited [s. 35 (1) (*a*)].

* Returns to be rendered by them [*ib.* (*d*)].

Insurance Committees to combine [s. 59 (5)].

They may **appoint** :

* The time for valuations [s. 36 (1)].

*† Such officers, inspectors, etc., as they determine [s. 57 (3)], with the powers of an inspector under s. 76 of the Friendly Societies Act, 1896 [*ib.* (5)].

*† An Advisory Committee (s. 58).

A proportion of the members of Local Insurance Committees [s. 59 (1) (*e*)].

Referees to decide disputes on appeal [s. 67 (3)].

They may also **take over** the affairs of a society or branch in deficiency, which does not submit or enforce a satisfactory scheme [s. 38 (1) (*e*) (*f*)] ; make a **claim** for excessive sickness [s. 63 (1)] ; and if successful **distribute** the sum awarded [*ib.* (8)].

The following matters can only be dealt with by them by "**special orders**" (see s. 113) :

* The inclusion as employed contributors of persons engaged in the excepted employments specified in Part II of the First Schedule [s. 1 (2)].

† The exclusion from that category of outworkers or any class of them [*ib.*, Part I (*c*)].

† Exclusion of subsidiary employments [*ib.*, Part II (*i*)].

† And of crews of fishing vessels [*ib.* (*k*)].

* Reinsurance of liabilities for maternity benefit (s. 20).

* Application of s. 46 to territorials and reservists not otherwise insured persons [s. 46 (8)].

† Specifying classes of employment where there is a custom of paying full remuneration during sickness [s. 47 (1)].

† Extending similar provisions to other employments [*ib.* (7)].

† Varying contributions in seasonal trades (s. 50).

*† Finally, they may by **order**, with the consent of the Treasury, before January 1st, 1914, do anything (including a limited power of modifying this Act), for establishing Insurance Committees, and otherwise bringing this Part of this Act into operation (s. 78).

"**Generally . . . into effect.**"—They may therefore, prescribe matters not specifically referred to, but (subject to s. 78), they must be governed by the ordinary law as to the validity of byelaws and

regulations. In order to be valid a byelaw must be (1) within the terms of the statute authorising its making; (2) not repugnant to the general law, and (3) reasonable. S. 65 —

By the Interpretation Act, 1889, s. 32 (1), "where an Act . . . confers a power or imposes a duty, then unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires"; and *ib.* (3) "where an Act . . . confers a power to make any rules, regulations or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, regulations, or bye-laws."

Separate regulations are to be made, and these other powers separately exercised, by the Insurance Commissioners for Scotland [s. 80 (1)], Ireland [s. 81 (1)], and Wales [s. 82 (1)], and for the purpose (among others) of valuation of societies with members resident in more than one country, by the joint committee of Commissioners [s. 83 (3)]. By s. 69 (2) a breach of any regulation is made an offence punishable in the same way as a breach of the Act itself.

Provided that, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, His Majesty in Council may annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

"Thenceforth be void . . . done thereunder."—See note to s. 83, *infra*.

Although it is not specifically enacted that this section is to come into operation on the passing of the Act, that result follows from s. 37 of the Interpretation Act, 1889.

66.—(1) If any question arises—

(*a*) as to whether any employment or any class of employment is or will be employment within the meaning of this Part of this Act or as to whether a person is entitled to become a voluntary contributor; or

Determination of questions by Insurance Commissioners.

See ss. 1 (2) and the First Schedule, 1 (3), 44 (2) (3) (7), *supra*.

Where the question is to be settled by special order (s. 113) clearly, and probably also where it is to be settled by certificate, of the Commissioners, this section [see (i) *infra*] does not give an appeal against that order or certificate.

S. 66 (1) (*b*) —

(*b*) as to the rate of contributions payable by or in respect of any insured person ; or

See ss. 4 (1) and the Second Schedule (Employed Rates), 5 (1), 38 (1) (*b*) (i), 44 (2) (*a*), 46 (1), (2) (*b*) (i), 47 (4) (*b*) (*c*), (5) (6), 48 (2) (3), 49 (1), 50.

(*c*) as to the rates of contributions payable in respect of an employed contributor by the employer and the contributor respectively ;

See ss. referred to under (*b*), and especially the Second Schedule (contributions by employers and employed contributors).

the question shall be determined by the Insurance Commissioners, in accordance with regulations made by them for the purpose :

"**Determined.**"—Cf. the Local Government Act, 1894, s. 70, on which the whole of this section is closely modelled. A letter from the Commissioners setting out their opinion is a sufficient "determination" within that Act (*A.-G.* v. *Hughes*, 81 L.T. 679). In cases under pars. (*b*) and (*c*) there is no provision for appeal, and a question arises as to the applicability of the Arbitration Act, 1889, to such proceedings [as to which see note to s. 63 (5), *supra*].

Cf. also *Wilford* v. *West Riding of Yorkshire C.C.* (1908, 1 K.B. 685), and *Board of Education* v. *Rice* (27 T.L.R. 378), decided under s. 7 (3) of the Education Act, 1902. In the latter case Lord Loreburn, L.C., said (at p. 381) :—

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter for discretion, involving no law. It will, I suppose, usually be of an administrative kind ; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from the determination of the Board under s. 7 (3) of this Act. The Board have, of course, no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences that may arise, and as they arise, between the managers and the Local Education

Authority. The Board is in the nature of an arbitral tribunal, and a court of law has no jurisdiction to hear appeals from the determination, either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described or have not determined the question which they are required by the Act to determine, then there is a remedy by *mandamus* and *certiorari*."

S. 66 (1) (c) —

Provided that—

(i) if any person feels aggrieved by the decision of the Insurance Commissioners on any question arising under paragraph (*a*), he may appeal therefrom to the county court, with a further right of appeal upon any question of law to such judge of the High Court as may be selected for the purpose by the Lord Chancellor, and the decision of that judge shall be final ;

"**Person feels aggrieved.**" — These and similar words have given rise to a number of decisions under several statutes. Under the Trade Marks Act, 1875, s. 5, any person who can show that the registration of a trade mark "tends to his injury or to his damage in the legal sense of that word" even if he is not himself an applicant for a similar trade mark, and is not carrying on business within the jurisdiction, may be "aggrieved" (*In Re Riviere's Trade Mark*, 26, Ch. D. 48). "The words are used to prevent the action of common informers or of persons interfering from merely sentimental motives, but they must not be so read as to make evidence of great and serious damage a condition precedent to the right to apply" (*In Re Appollinaris Co.'s Trade Marks*, 1891, 2 Ch. 186, at p. 224 ; *Powell* v. *Birmingham Vinegar Brewery Co.*, 1894, A.C. 8). By the Coypright Act, 1842, s. 5, "any person who shall deem himself aggrieved" may apply to expunge an entry in the register. This does not include a person who has been convicted of an infringement, unless the entry interferes with some right he would otherwise have (*Graves' Case*, L.R. 4, Q.B. 715). The Licensing Act, 1828, s. 27, gives a right of appeal to "any person who shall think himself aggrieved." This enables the mortgagee of licensed premises to appear and appeal against a refusal by justices to renew a license, although the actual licensee opposed the renewal (*Garrett* v. *Middlesex JJ.*, 12, Q.B.D. 620). But a rival innkeeper is not "aggrieved" by the grant of a license (*R.* v. *Middlesex*, 3 B. and Ad. 938) ; and the owner of licensed premises cannot appeal against the endorsement of a conviction of his tenant upon the license, under s. 52 of the Licensing Act, 1872, because he could never have been a party to the original proceedings (*R.* v. *Andover*, 16 Q.B.D. 711). See also *Drapers' Co.* v. *Haddon* (9 T.L.R. 36), and *R.* v. *Keepers of Peace* and *JJ. of County of London* (25 Q.B.D. 357). The Bankruptcy Act, 1883, s. 104 (2), gives an appeal to "any person aggrieved." This

S. 66 (1) (c) — includes the Official Receiver in a matter within his province, although he has no personal interest (*In Re Reed, Bowen & Co.*, 19 Q.B.D. 174), and the holder of a bill of sale whose title is affected by an adjudication (*Exp. Ellis*, 2 Ch. D. 797).

The following persons or bodies (see Interpretation Act, 1889, s. 19) might conceivably "feel aggrieved" by a decision under this section :—

(1) An employer, or person alleged to be such, who has appeared before the Commissioners ; it is clear (*Garrett* v. *Middlesex JJ.*, *ubi. sup.*) that he may appeal although his employee desires to be treated as an employed contributor.

(2) An employee who has appeared before the Commissioners ; he can appeal, with or without the consent of his employer.

(3) Any other employer or employee who will be affected by the decision ; in spite of *R.* v. *Andover* (*ubi. sup.*) there seems little doubt that he might appeal.

(4) An approved society of which any such employee is, or is about to become, a member ; in view of the substantial advantages conferred by the Act upon a society in respect of each of its members who is an insured person [see *e.g.*, s. 55 (2) *supra*], and the heavier liability which it would have to undertake with regard to him apart from this Act, it is at least arguable that, especially with regard to its existing members, a society is within the definition given, *e.g.*, in *Powell* v. *Birmingham, &c., Co.* (*ubi sup.*).

(5) A local Insurance Committee ; here the same considerations hardly apply, and such a committee appears to have no *locus standi*.

(6) A medical practitioner, or local medical committee (s. 62 *supra*), might consider themselves aggrieved by a decision conferring upon a patient or class of patients the right to medical benefit, especially if the question of income limit [s. 15 (3)] and the First Schedule, Part II (*g*)] were involved.

(7) An inspector appointed by the Commissioners [(ss. 57 (3) *supra* and 112 *infra*] will doubtless have some duties in the enforcement of this Act, and might possibly be "aggrieved" within the meaning of *In re Reed, Bowen & Co.* (*ubi sup.*).

"**Any question . . . paragraph** (*a*)."—It is very doubtful whether this includes cases where the inclusion or exclusion of a particular class of employment is to depend on the "certificate" [see the First Schedule Part II (*b*) and (*c*), or 'opinion' [*ib.* (*g*)], of the Commissioners, so as to give an appeal against such certificate or opinion. Probably it does not give any appeal in such a case though there is a distinction between the appeal to the County Court, which may involve matters of fact, and the further appeal to a judge of the High Court, which is confined to questions of law (see the next note) : clearly it cannot apply so as to give an appeal against a "special order" for the inclusion or exclusion of a particular employment [*ib.* Part I (*c*) and Part II (*k*), s. 1 (2), see s. 113 and the Ninth Schedule]. But it will of course apply to any question which may arise as to whether any employment is included in the terms of such special order, and perhaps certificate, when made.

"**Any question of Law.**"—Any question relating to the interpretation of a statute, even if it involves the consideration of matters of fact, is a question of law (*R.* v. *Bridge* 24 Q.B.D. 609, not overruled by

Westminster C.C. v. *Gordon Hotels, Ltd.* 1907, 1 K.B. 910 and 1908, A.C. 142). But where the question depends upon the discretion of any tribunal, the decision cannot be erroneous in point of law (*Diss Urban Sanitary Authority* v. *Aldrich*, 2 Q.B.D. 179) : see last note.

S. 66 (1) (*c*) (i) —

(ii) the regulations of the Insurance Commissioners may provide for questions under paragraph (*b*) being determined, in the case of any person who is or is about to become a member of an approved society, by the society.

See notes to (*b*) *supra*, but clearly many cases would not be suitable for decision in this way.

"**About to become.**"—This must mean "accepted as a member."

(iii) the Insurance Commissioners may, if they think fit, instead of themselves deciding whether any class of employment is or will be employment within the meaning of this Part of this Act, submit the question for decision to the High Court in such summary manner as subject to rules of court may be directed by the court, and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question, and the decision of the court shall be final.

"**Subject to rules of Court.**"—The following rules have been made under s. 29 of the Local Government Act, 1888, and s. 70 (1) of that of 1894, which are both in the same terms as this paragraph :

"The summary proceeding for submitting any question for decision to the High Court of Justice . . . shall be by special case to be agreed upon by the parties or in default of such agreement to be settled by an arbitrator agreed upon by the parties, or (if necessary) appointed by a judge at chambers, or to be settled by a judge at chambers. The special case, when settled, shall be filed at the Crown Office Department, at the Central Office of the Supreme Court, by the . . . local authority concerned, within eight days from the settlement thereof, and shall be put into the Crown paper for argument as if it were a case stated by Justices under 20 and 21 Vict. c. 43."—(R.S.C., Aug. 10th, 1892, and Dec. 10th, 1894.)

S. 66 (1) (c) (iii) —

"**Shall be final.**"—These words are not in s. 29 of the Act of 1888, but no appeal lay under that section (*Ex parte Kent C. C.*, 1891, 1 Q.B. 725.

(2) This section shall come into operation on the passing of this Act.

Disputes.

67.—(1) Subject to the provisions of the foregoing section every dispute between—

(*a*) an approved society or a branch thereof and an insured person who is a member of such society or branch or any person claiming through him ;

(*b*) an approved society or branch thereof, and any person who has ceased to be a member for the purposes of this Part of this Act of such society or branch, or any person claiming through him ;

(*c*) an approved society and any branch thereof ;

(*d*) any two or more branches of an approved society,

relating to anything done or omitted by such person, society, or branch (as the case may be) under this Part of this Act or any regulation made thereunder, shall be decided in accordance with the rules of the society, but any party to such dispute may in such cases and in such manner as may be prescribed appeal from such decision to the Insurance Commissioners.

"**In accordance with the rules of the Society.**"—And of the statute (if any) under which the society is registered or established. See the Friendly Societies Act, 1896, ss. 43 (2) and 68, the Collecting Societies Act, 1896, s. 7 (which applies also to industrial assurance companies), the Industrial and Provident Societies Act, 1893, s. 49, &c.

"**Appeal.**"—There are cases in which appeal is provided for under the statutes referred to above ; unless those cases are excluded by regulation, it would seem that the appeal to the Insurance Commissioners would be from the final decision under those statutes.

(2) Every dispute between an insured person and the Insurance Committee, relating to anything done or omitted by such person or the Insurance Committee under this Part of this Act, or any regulation made hereunder, shall be decided in the prescribed manner by the Insurance Commissioners. S. 67 (2)

"**Anything done or omitted.**"—See note to the last subsection. There is no express provision for the decision of disputes between a society and an Insurance Committee; see, however, s. 15 (6) *supra*. As, however, the words here are so wide, any such question could probably be raised by one or more insured persons, members of the society, on its behalf.

(3) The Insurance Commissioners may authorise referees appointed by them to decide any appeal or dispute submitted to the Insurance Commissioners under this section.

(4) The Insurance Commissioners may make regulations as to the procedure on any such appeal or dispute, and such regulations may apply any of the provisions of the Arbitration Act, 1889, but, except so far as it may be so applied, the Arbitration Act, 1889, shall not apply to proceedings under this section, and any decision given by the Insurance Commissioners or a referee under this section shall be final and conclusive.

Cf. s. 88 (4) *infra*, and note to s. 63 (5) *supra*; also the Friendly Societies Act, 1896, s. 68 (7), and other Statutes referred to under subs. (1) *supra*.

Protection against distress and execution in certain cases.

68.—(1) Where the medical practitioner attending on any insured person in receipt of sickness benefit certifies that the levying of any distress or execution upon any goods or chattels belonging to an insured person and being on premises occupied by him, or the taking of any proceedings in ejectment or for the recovery of any rent or to enforce any judgment

S. 68 (1) in ejectment against such person, would endanger his life, and such certificate has been sent to the Insurance Committee and has been recorded in manner hereinafter provided, it shall not be lawful during any period named in the certificate for any person to levy any such distress or execution or to take any such proceedings or to enforce any such judgment against the insured person :

"**Distress or Execution.**"—Distress may in the ordinary way be levied without legal process of any kind, and without demand ; execution can only issue as the result of a judgment or award, but in general, without leave. Execution may, however, be stayed at any time at the discretion of the court : see as to the High Court R.S.C., O. 42 r. 17 (*b*) ; and as to County Courts, the County Courts Act, 1888, s. 153, where sickness is specially mentioned as the principal reason for such a stay.

"**Occupied by him.**"—This includes occupation for purposes of business, &c., as well as of residence, though perhaps that is not the intention.

"**Proceedings in ejectment or for the recovery of any rent.**"—These may be in the County Court, where the value and rent are under £100 a year, under ss. 138-9 of the County Courts Act, 1888 ; but the making of an order is in the discretion of the judge, and is subject to the defendant "showing good cause" against it. Although there is no reported decision on the point, there can be little doubt that serious sickness would be included in this. There is a similar provision in the Small Tenements Recovery Act, 1838, s. 1, which empowers justices to make an ejectment order where the rent is under £20, and the term does not exceed seven years.

"**Enforce any judgment in ejectment.**"—Writ of possession in the High Court, issues without leave (O. 47 r. 2), and is apparently not subject to O. 42 r. 17 ; nor is a possession warrant in the County Court subject to s. 153 of the County Courts Act, 1888.

"**It shall not be lawful.**"—In addition to the penalties of sub-section (3), a person levying such distress, &c., would be liable to an action at the suit of the insured person.

Provided that, if any person desirous of levying such distress or execution or taking such proceedings or enforcing such judgment disputes the accuracy of the certificate, he may apply to the registrar of the county court, who, if he is of opinion that the certificate should be cancelled or modified, may

make an order cancelling or modifying it, and no appeal shall lie against any such order or a refusal to make any such order. S. 68 (1)

The medical profession has strongly objected to power being given to the county court registrar to cancel a medical certificate stating that ejectment would endanger life. But probably few registrars would take the responsibility without obtaining a second medical opinion.

(2) A certificate granted for the purpose of this section shall continue in force for one week or such less period as may be named in the certificate, but may be renewed from time to time for any period not exceeding one week, up to but not beyond the expiration of three months from the date of the grant of the original certificate, but no such renewal shall have effect unless sent to the Insurance Committee and recorded as aforesaid :

"**Months.**"—Calendar months (Interpretation Act, 1889, s. 3.)

Provided that the protection conferred by this section shall not extend beyond the expiration of one month from such date if, on demand being made by the person desirous of levying such distress or execution, or taking such proceedings, or enforcing such judgment, proper security is not given for payment of rent thereafter to become due from the insured person or the amount of the judgment debt, as the case may be, and any dispute as to the sufficiency of the security shall be determined by the registrar of the county court, whose decision shall be final and not subject to appeal.

"**Proper security.**"—This may be either by bond, with sureties, or by deposit (County Court Act, 1888, ss. 108-9 ; cf. also the Small Tenements Recovery Act, 1838, ss. 3-4).

"**Rent thereafter to become due.**"—This clearly cannot exceed two calendar months' rent, because after three months the certificate will automatically lapse.

S. 68 (3) (3) If any person knowingly levies or attempts to levy any such distress or execution or takes any such proceedings or enforces or attempts to enforce any such judgment in contravention of this section, he shall be liable on summary conviction to a fine not exceeding fifty pounds.

"**Knowingly,**" *i.e.*, knowing that such a certificate has been recorded, but in view of the next subsection it is difficult to see how any person could, otherwise than wilfully, be ignorant of it.

"**Summary Conviction.**"—See note to s. 69 (1) *infra*.

(4) A certificate or renewal thereof granted under this section shall forthwith be sent to the Insurance Committee, and the Committee shall, unless it has reason to suspect its genuineness, record it in a special register without fee, and such register shall at all reasonable times be open to inspection; and, where so recorded, its genuineness shall not be questioned in any proceedings against a sheriff or other officer for failure to levy any distress or execute any warrant.

"**Forthwith.**"—If in spite of reasonable diligence in complying with the provision, there is nevertheless an interval between the grant and recording of a certificate or renewal, that will probably not authorise proceedings in such interval which would not be lawful after it has been recorded.

"**In any proceedings . . . any warrant.**"—This will not of course prevent its being questioned in any other proceedings, particularly if the insured person is a party to them, whether a sheriff or other officer is also a party or not.

(5) Where the time within which a warrant may be executed is limited, any period during which the warrant cannot be executed by reason of the provisions of this section shall be disregarded in computing the time within which the warrant may be executed.

S. 69 (1). Offences.

69.—(1) If, for the purpose of obtaining any benefit or payment or the crediting of a reserve value under this Part of this Act, either for himself or for any other person, any person knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding three months with or without hard labour.

"**Either for himself or any other person.**"—This would include the case of an official of a society making a false statement or representation.

"**On summary conviction,**" *i.e.*, before justices or a stipendiary, subject, if imprisonment is inflicted without the option of a fine, to an appeal to Quarter Sessions on any question of law or fact (Summary Jurisdiction Act, 1879, s. 19), or to the right to have a case stated on any point of law for a Divisional Court (*ib.* s. 33; Summary Jurisdiction Act, 1857, s. 2). The latter right is open to the prosecutor as well as to the defendant.

(2) If any employer has failed to pay any contributions, which under this Part of this Act he is liable to pay in respect of an employed contributor, or if any such employer, any insured person, or any other person is guilty of any other contravention of or non-compliance with any of the requirements of this Part of this Act or the regulations made thereunder in respect of which no special penalty is provided, he shall for each offence be liable on summary conviction to a fine not exceeding ten pounds, and where the offence is failure or neglect on the part of the employer to make any such contributions, to pay to the Insurance Commissioners a sum equal to the amount of the contributions which he has so failed or neglected to pay, which sum when paid shall be treated as a payment in satisfaction of such contributions:

S. 69 (2) —

"**Has failed.**"—The section does not require "wilful" failure, but it is doubtful if failure without some element of personal default or guilty knowledge on the part of the employer is sufficient to justify a conviction under the section for a nonfeasance (see *Dickenson* v. *Fletcher*, L.R. 9 C.P. 1). If, for instance, contributions are unpaid through the default of a manager or servant appointed by the employer for the purpose, it is doubtful if the employer can be convicted. Compare the words "failed or neglected" in the next section, which relates to civil actions against the employer.

"**Pay any contributions.**"—See notes to s. 66 (1), and cf. s. 101; note, however, that the insured person under Part I cannot [as he can by s. 101 (2)], be proceeded against for any failure to pay contributions, and that there is no provision here similar to s. 101 (6), making the decision of an umpire, referee, &c., binding in such proceedings. It is, therefore, open to an employer instead of adopting or taking part in the procedure under s. 66, to dispute his liability if proceedings are taken against him under this section, with the right to have a case stated (see the last note) on any point of law. And even if he was a party to a decision under s. 66, that decision will not be binding upon him in a criminal prosecution, to establish the truth of the facts on which it was based (*R.* v. *Fontaine Moreau*, 17 L.J.Q.B., 187). Any decision of the Court of King's Bench on any matter of law will, of course, be an authority in such proceedings, but as there is no appeal to the Court of Appeal, the Court of King's Bench may review its own decisions.

"**Treated as a payment . . . such contributions.**"—With the result that they will be written off the arrears of the contributor.

Provided that no person shall be liable to any penalty in respect of any matter if he has acted in conformity with any decision in respect thereto by the Insurance Commissioners, or, if the matter is one which the Insurance Committee is competent to decide, in conformity with its decision.

Civil proceedings against employer for neglecting to pay contributions.

70.—(1) Where an employer has failed or neglected to pay any contributions which under this Part of this Act he is liable to pay in respect of a person being a member of an approved society in his employment, and by reason thereof that person has been deprived in whole or in part of his right to any benefits which would otherwise have been payable to him, he shall be entitled to take proceedings against the employer for the value of the right of which he has been so deprived, and in any

such proceedings the employer may be ordered to pay to the Insurance Commissioners a sum equal to the value so ascertained, which sum when paid shall be carried to the credit of the society of which such person is a member, and thereupon such person shall thenceforth be entitled to receive from the society benefits at the same rate as he would have been entitled to had the contributions been properly paid, together with the difference between the amount of the benefits (if any) he has actually received and the benefits he would have received had the contributions been properly paid. S. 70 (1)

"**Failed or neglected.**"—Cf. the preceding section where the words "or neglected" do not occur, and see note thereto.

"**Being a member of an approved society.**"—See s. 79. A deposit contributor has no claim against his employer under this section. It appears that he has no action at common law.

"Where an Act creates an obligation and enforces the performance in a specific manner (as by s. 69 hereof), we take it to be a general rule that performance cannot be enforced in any other manner" [per Lord Tenterden, in *Doe* v. *Bridges*, 1 B and Ad. 847 at p. 859, cited in *Stevens* v. *Jeacocke*, 11 Q.B. 731 at p. 742; and see *Atkinson* v. *Newcastle*, 2 Ex. Div. 441 at p. 447, and *R.* v. *Hall* (1891), 1 Q.B. 747]. It cannot be said, however, that the matter is free from doubt.

In any case the deposit contributor can secure payment of arrears by starting a prosecution under s. 69.

"**Which would otherwise have been payable to him.**"—The member can take action only when he has actually lost benefit and not a mere contingent right to benefit. Query whether benefits payable include medical and sanatorium benefit.

"**To take proceedings,**" *i.e.*, in the County Court or High Court according to the amount claimed.

"**The value of the right.**"—The right being one to immediate payment of benefits, since no action can accrue until the benefits would have been payable, the value of the right would appear to be the actual benefit lost.

(2) Proceedings may be taken under either this or the last preceding section notwithstanding that proceedings have also been taken under the other section in respect of the same failure or neglect to pay contributions.

S. 71

Repayment of benefits improperly paid.

71.—If it is found at any time that a person has been in receipt of any payment or benefit under this Part of this Act without being lawfully entitled thereto he, or in the case of his death his personal representatives, shall be liable to repay to the Insurance Commissioners the amount of such payment or benefit, and any such amount may be recovered as a debt due to the Crown and when so recovered shall be carried to the credit of the society of which such person was a member, or if he was not a member of any approved society, of the Post Office fund.

Provisions as to application of existing funds of friendly societies.

72.—(1) Every registered friendly society which provides benefits similar to any of those conferred by this Part of this Act shall submit to the Registrar of Friendly Societies a scheme for continuing, abolishing, reducing, or altering such benefits as respects members who become insured persons and for continuing, abolishing, or reducing the contributions of such members, so, however, that the combined effect of the alteration of the benefits and contributions shall not prejudicially affect the solvency of the society, and, if the scheme or a supplementary scheme shows on an actuarial valuation that, owing to the alterations in the benefits and contributions effected by the scheme, any part of the existing funds of the society is set free as not being required to meet the liabilities of the society, the scheme or the supplementary scheme shall provide for the application of the part of the funds so set free in any one or more of the following ways :—

"**Every registered friendly society.**"—Note that this section is not limited in its operation to approved societies.

"**Submit . . . a scheme.**"—The section gives to the Registrar

no express power of refusal to confirm or register such scheme, nor does it explicitly require him to do so. Such a scheme must, however, necessarily involve and be an alteration of the rules of the society as to which s. 13 (2) of the Friendly Societies Act, 1896 (59 and 60 Vict. c. 25), provides that "the registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Act, issue to the society an acknowledgment of registry of the amendment, and that acknowledgment shall be conclusive evidence that the amendment is duly registered." S. 72 (1) —

It is clear, therefore, that if such a scheme contravenes neither the provisions of the Friendly Societies Acts (which are to be read as one), nor the provisions of this section, the registrar is bound to register and acknowledge it, a proceeding which is apparently the "confirmation" referred to in subs. (3), and is conclusive (*Dewhurst* v. *Clarkson*, 23 L.J. Q.B. 247).

As to appeals from refusal to register changes of rules, see 59 and 60 Vict. c 25, s. 13 (3).

"**Shall submit.**"—The section is mandatory, but there is nothing to compel the society to modify the contributions and benefits of insured members to any defined extent.

"**Insured persons,**" including persons in the armed services [subs. (4)], but not persons over 65 at the commencement of the Act [ss. 1 (4) and 49].

"**Shall not prejudicially affect the solvency of the society.**"—The benefits must be reduced in value to at least the same extent as the contributions of members becoming insured persons. On the other hand there is no provision that the scheme shall not prejudicially affect the members becoming insured persons; since they are the other parties to the bargain with the society it is inevitable that it should do so unless it be drawn with such meticulous care as to vary in no way the value of either party's rights. The intention of the statute would appear to be that the insured person, being himself assisted by his employer and the State, should be liable himself to render some slight assistance to his fellow members who are left outside the National Insurance Act. See par. (*a*) hereof.

"**If . . . any part of the existing funds . . . is set free.**"—That is either by a scheme to some extent prejudicial to the insured persons who are members of the society, or, in the case of an approved society, by the reserve values credited to it in relief of its liabilities.

(*a*) towards the cost of the provision of other or increased benefits payable by the society independently of this Part of this Act to existing members whether insured persons or not:

"**Existing members,**" *i.e.*, at the passing of this Act [subs. (4)].

"**Whether insured persons or not.**"—This paragraph will allow friendly societies, whether they become approved or no, to make special provision for the medical treatment of those members who, being left out of the National Insurance Scheme on account of disablement or otherwise, may be unable to get medical attendance at the same contract rate as in the past; see s. 15 (2) (*e*).

S. 72 (1) (*b*) —

(*b*) in reduction of the contributions payable by such members in respect of the benefits payable by the society independently of this Part of this Act ;

(*c*) towards the payment or repayment of contributions payable under this Part of this Act by such of its existing members as are entitled and elect to receive benefits under this Part of this Act through the society.

"**To receive benefits . . . through the society.**"—Only a friendly society which becomes approved can pay or repay its members' statutory contributions. It is clear that a society which is already giving to a member of long standing sick pay and medical benefit equal to that given under the Act in return for a small contribution, will be in a position, on receiving his reserve value, to pay a part if not the whole of his statutory contribution while paying also the statutory benefits, without loss to the society.

(2) This section shall apply to branches of registered societies in like manner as to societies : Provided that a society with branches may, if it so desires (subject always to the exercise of any right of a branch, expressly conferred by the rules of the society, to dispose of any of its funds for the benefit solely of the members of the branch), submit a scheme applicable to all its branches, and it shall be competent for the society to provide by its scheme or supplementary scheme for the application of the whole or any part of any sums so set free towards the discharge of any deficiencies in any of its branches which may be found to exist on such actuarial valuation as aforesaid.

"**A scheme applicable to all its branches**"—By s. 106 of the Friendly Societies Act, 1906, a "branch" is a "number of the members of a society, under the control of a central body." The rules of the central body, therefore, prevail generally over those of the branch, and can even restrain it from seceding [*Wilkinson* v. *Jagger*, 20 Q.B.D. 423 ; *Schofield* v. *Vaux* (1886) 36 W.R. 170, *n*]. See also rule 3 of the model rules for branches issued by the central registry office.

(3) Any scheme adopted by a society or branch of a society in accordance with its rules when confirmed by the Registrar of Friendly Societies shall be deemed to be incorporated in the registered rules of the society or branch and may be amended accordingly, so, however, that no amendment shall be inconsistent with the provisions of this section. S. 72 (3)

"**When confirmed.**"—See note to subs. (1) hereof.

(4) This section shall apply to seamen, marines, and soldiers, from whose pay deductions are made under this Part of this Act as if they were insured persons, and for the purposes of this section "existing" means existing at the passing of this Act.

(5) This section shall come into operation on the passing of this Act.

Provisions as to existing employers' provident funds.

73.—(1) Where at the passing of this Act a superannuation or other provident fund has been established for the benefit of the persons employed by one or more employers, the provisions of the last foregoing section shall apply with the necessary adaptations and with this modification that, where under the Act, deed, or other instrument establishing the fund or otherwise any sum is payable by the employer towards benefits secured by the Act or deed, and those benefits include benefits similar to any of those conferred by this Part of this Act, the scheme may provide for allowing the employer to deduct from any contributions payable by him as aforesaid towards benefits of a nature similar to those under this Part of this Act an amount not exceeding the amount of the employer's contributions payable by him under this Part of this Act.

"**A superannuation . . . fund.**"—This applies to all such funds whether approved under s. 25 or no, and will apply to the funds

S. 73 (1) — referred to in the First Schedule, Part II, pars. (*b*) and (*c*), if they contain insured persons.

"**Payable by the employer towards benefits.**"—These words are wide enough to cover both a general subscription of the employer to the fund, and also the case where the employer under the Act, deed, or instrument, guarantees the benefits or pays a fixed proportion of them, etc.

"**Similar to those under this Part of this Act.**"—In cases where the employer's contribution is ear-marked (*e.g.*, in part for sick pay and in part for death benefits or widows' pensions) the deduction can be made only from that part which is not appropriated to benefits outside this Act; but where the contribution is a general one the Registrar must be satisfied that any proposed deductions comply with the terms of this section.

It is submitted that for the purpose of such deductions superannuation allowances can be taken into consideration only in so far as they secure provision in respect of sickness or disablement [Cf. s. 72, First Schedule, Part II (*c*)].

How far they do secure such provision is a matter for actuarial investigation, having regard to the probable sickness experience of persons drawing superannuation benefit.

The remittance of contributions by insured employees (to which s. 72 applies) is not subject to any such restriction as is that of the employer's contributions.

"**Employer's contributions.**"—The effect of the whole subsection is to permit, within certain limits, the withdrawal of both employers' and employees' contributions, up to a maximum of sevenpence per week, from an existing superannuation or provident fund.

(2) Where the fund is one out of which pensions or superannuation allowances are payable, and it is proved to the satisfaction of the Insurance Commissioners that the rearrangements required in consequence of this Part of this Act will, upon a valuation under the existing rules of the fund, affect prejudicially the sum available for the payment of pensions or superannuation allowances, the Insurance Commissioners may grant a certificate authorising the value of the prospective extension of benefits under this Part of this Act when the reserve values have been written off as hereinbefore provided, to be brought into account in the valuation of the assets available for the discharge of the liabilities of

the fund in respect of pensions and superannuation allowances. S. 73 (2)

"**Certificate.**"—See Appendix I, 16 (*e*).

"**A valuation under the existing rules of the fund.**"—The intention of the section is apparently to protect those now entitled or shortly to be entitled to pensions, and yet whose pensions might under the existing rules as to valuation suffer diminution. The assumption apparently underlying the subsection is that in eighteen years' time, or such other time as is required to pay off the reserve values, some provision will be made for extended superannuation allowance to the younger members of the fund ; and the Insurance Commissioners may allow this expectation to be discounted for the benefit of the older members. Where such a certificate as in this subsection mentioned has been granted, superannuation allowances can be paid during the coming years at a rate not actuarially justified by the reduced contributions, drawing upon existing reserves in the anticipation that extended benefits hereafter will secure a superannuation allowance out of the funds of approved societies for those qualifying in the more distant future.

"**The prospective extension of benefits,**" *i.e.*, under s. 8 (9) hereof, which does not specify the benefits nor give any guidance as to their present value. See Chap. VI *supra*.

Provisions as to minors who are members of approved societies.

74.—Any member of an approved society who is a minor may execute all instruments and give all acquittances necessary to be executed or given under the rules of such society, but shall not be a member of the committee, or a trustee, manager, or treasurer of such society or any branch thereof.

This section is taken from the Friendly Societies Act, 1896, 59 & 60 Vict. c. 25, s. 36 (2). It is required only in the case of approved societies which are not registered as friendly societies within the meaning of that Act. This section does not empower minors to contract loans from their society [*Nottingham Permanent Building Society* v. *Thurston*, (1903), A.C. 6], nor to appoint an agent to do the acts permitted by the section [*Rudd* v. *James* (1896), 2 Ch. 554].

Power for societies to register under Friendly Societies Act, 1896.

75.—Any society for the purpose of carrying on business under this Act, either alone or together with any purpose mentioned in section eight, subsection (1), of the Friendly Societies Act, 1896, may, after the passing of this Act, be registered as a friendly society under the Friendly Societies Act, 1896, notwithstanding that the contributions under this Act are not voluntary.

S. 75 —

"**Any purpose mentioned in,**" &c.—The purposes are those "of providing *by voluntary subscriptions* of the members thereof, with or without the aid of donations, for :—"

(*a*) Relief and maintenance of members and a limited class of dependants during sickness, infirmity, old age, infancy, and widowhood.
(*b*) Death benefits, and payments to Jews during confined mourning.
(*c*) Relief in travel, distress, shipwreck, etc.
(*d*) Endowment.
(*e*) Fire insurance of tools, etc.
(*f*) Guaranteeing performing of their duties by officers and servants of the society or branches.

"**Voluntary.**"—See note above.

Application of Acts of Parliament to approved societies and sections.

76.—(1) Except in so far as may be inconsistent with this Part of this Act, any business transacted under this Part of this Act by any approved society shall be treated as part of the ordinary business transacted by societies of the class to which that society belongs, and any enactment applying to the society in relation to the transaction of such ordinary business shall apply accordingly in relation to the business transacted by the society under this Part of this Act.

"**Any enactment.**"—This subsection incorporates the whole of the Friendly Societies Acts, 1896 and 1908, in Part I of this Act, so far as relates to friendly societies becoming approved societies. It incorporates in like manner the Shop Clubs Act, 1902, the Collecting Societies and Industrial Assurance Companies Act, 1896, the Industrial and Provident Societies Act, 1893, and the Assurance Companies Act, 1909, &c., so far as societies otherwise within those Acts and operating under Part I of this Act are concerned. See note to s. 23 (1).

(2) This section shall apply to an approved society which is a separate section of another body, subject to the necessary adaptation.

"**Separate section.**"—See s. 22 (1). This subsection applies the provisions of 59 and 60 Vict. c. 26, so far as not inconsistent with this Act, to a section of a collecting society set up under s. 22 hereof.

Powers of the Local Government Board.

77.—(1) The Local Government Board may, for the purposes of their powers and duties under this Part of this Act, hold such local inquiries and

investigations as they may think fit, and the Board and their inspectors shall have for the purposes of such an inquiry the same powers as they respectively have for the purposes of an inquiry under the Public Health Acts, and the expenses incurred by the Board in respect of such inquiries and other proceedings under this Part of this Act (including the salary of any inspector or officer of the Board engaged in the inquiry or proceedings, not exceeding three guineas a day) shall be paid by such authorities and persons and out of such funds and rates as the Board may by order direct, and the Board may certify the amount of the expenses so incurred, and any sum so certified and directed by the Board to be paid by the authority or person shall be a debt from that authority or person to the Crown: Provided that this provision shall not apply to inquiries with respect to responsibility for excessive sickness. S. 77 (1)

"**Powers and duties.**"—These are as follows: To appoint diseases other than tuberculosis for sanatorium benefit [s. 8 (1) (*b*)]; to approve sanatoria and other institutions, and other treatment, for the purposes of that benefit [s. 16 (1)]; to consult with the Insurance Commissioners as to the reports to be furnished by local Insurance Committees [s. 60 (1) (*a*)]; to appoint a competent person in certain cases to hold an inquiry as to excessive sickness [s. 63 (1)]: to make regulations for the deduction of sums payable by a local authority after such an inquiry out of sums due to that authority from the Local Taxation Account [s. 63 (6)]; but s. 77 is not to apply to cases under s. 63; to distribute any sum available for the provision of sanatoria, and to authorise and control its expenditure (s. 64).

"**The same powers.**"—See note to s. 63 (5) *supra.*

"**Excessive sickness.**"—S. 63 *supra.*

(2) Any approval given by the Local Government Board under this Part of this Act may be given for such term, and subject to such conditions as the Board may think fit, and the Board shall have

S. 77 (2) power to withdraw any approval which they have given.

"**Withdraw any approval.**"—Cf. s. 29 *supra*.

(3) The Local Government Board may make it a condition of any approval to be given, or grant of money to be made under this Part of this Act, that the Board shall have such powers of inspection as may be agreed.

Power to remove difficulties.

78.—If any difficulty arises with respect to the constitution of Insurance Committees, or the advisory committee, or otherwise, in bringing into operation this Part of this Act, the Insurance Commissioners, with the consent of the Treasury, may by order make any appointment and do anything which appears to them necessary or expedient for the establishment of such committees or for bringing this Part of this Act into operation, and any such order may modify the provisions of this Act so far as may appear necessary or expedient for carrying the order into effect: Provided that the Insurance Commissioners shall not exercise the powers conferred by this section after the first day of January nineteen hundred and fourteen.

"**By order.**"—The Act contains no provision as to the manner of making such an order. Regulations must be laid before Parliament (s. 65) and Special Orders must follow a public inquiry (s. 113), but orders modifying the provisions of the Act may apparently be made in such manner as the Commissioners may think fit. See Appendix I, 17.

"**So far as may appear necessary or expedient.**"—The Court will doubtless watch jealously the process of modification of statute law by administrative act; and it is submitted that if the validity of such an order be called in question, the Commissioners must show reasonable grounds for holding it to be necessary or expedient.

Interpretation.

79.—For the purposes of this Part of this Act unless the context otherwise requires—

The expression "branch," in relation to a society

shall not include any branch of the society which is not itself separately registered; S. 79

See note to s. 23 (1)

The expression "disease or disablement" means such disease or disablement as would entitle an insured person to sickness or disablement benefit;

See s. 8 (1) (*c*).

The expression "dependants," in relation to any person, includes such persons as the approved society or Insurance Committee shall ascertain to be wholly or in part dependent upon his earnings;

"**Wholly or in part dependent.**"—See s. 13 of the Workmen's Compensation Act, 1906, where these words occur, and decisions thereon. See particularly the cases set out in note to s. 2 (1) (*b*) *supra*.

A person whose normal occupation is employment within the meaning of this Part of this Act shall, for the purpose of reckoning the number and rate of contributions, be deemed to continue to be an employed contributor notwithstanding that he is temporarily unemployed, but, if such period of unemployment extends beyond twelve months, he shall not continue to be an employed contributor unless the approved society of which he is a member or, if he is not a member of such a society, the Insurance Committee, is satisfied that his unemployment is due to inability to obtain employment, and is not due to any change in his normal occupation;

The suspension of a member of an approved society from benefits under this Part of this Act shall not be deemed to deprive the member of his membership;

S. 79 — "**Suspension of a member.**" See s. 10 (1). A member so suspended continues to have a transfer value under that section, and has certain advantages in the event of his resuming employment.

Membership of an approved society means membership for the purposes of this Part of this Act ;

The expression "valuer" means a person possessing actuarial qualifications as may be approved by the Treasury ;

The expression "county" means administrative county ;

The Scilly Isles shall be deemed to be a county and the council of those Isles the council of a county, but the Insurance Committee for the Scilly Isles shall be constituted in such manner as the Insurance Commissioners prescribe ;

Monmouthshire shall be deemed to form part of Wales ;

A person shall be deemed according to the law in England, Wales, and Ireland, as well as according to the law in Scotland, not to have attained the age of seventeen until the commencement of the seventeenth anniversary of the day of his birth and similarly with respect to other ages.

Application to Scotland.

80.—This Part of this Act in its application to Scotland shall be subject to the following modifications :—

(1) For the purpose of carrying this Part of this Act into effect in Scotland, there shall be constituted, as soon as may be after the passing of this Act, Commissioners for Scotland (to be called the Scottish Insurance Commissioners) with a central office in Edinburgh,

and with such branch offices in Scotland as the Treasury may think fit, and the Scottish Insurance Commissioners, of whom one at least shall be a duly qualified medical practitioner, shall be appointed by the Treasury, and may appoint such officers, inspectors, referees, and servants for the purposes aforesaid as the Scottish Insurance Commissioners, subject to the approval of the Treasury, may determine, and the provisions of this Part of this Act with respect to the payment of the salaries and remuneration of the Insurance Commissioners, and the officers, inspectors, referees, and servants appointed by them, and with respect to the payment of the expenses incurred by the Treasury or the Insurance Commissioners in carrying this Part of this Act into effect shall, with the necessary modifications, apply to the payment of the salaries and remuneration of the Scottish Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them and to the payment of expenses incurred by the Treasury or the Scottish Insurance Commissioners in carrying this Part of this Act into effect in Scotland, and for the purpose aforesaid the Scottish Insurance Commissioners, and the officers, inspectors, referees, and servants appointed by them shall respectively have all the like powers and duties as are, by the provisions of this Act, conferred and imposed on the Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and references S. 80 (1)

S. 80 (1)

in those provisions to the Insurance Commissioners shall be construed as references to the Scottish Insurance Commissioners:

(2) All sums received from contributions under this Part of this Act in respect of insured persons resident in Scotland, and all sums paid out of moneys provided by Parliament in respect of benefits under this Part of this Act to such persons, and the expenses of administration of such benefits shall be paid into a fund to be called the Scottish National Health Insurance Fund, under the control and management of the Scottish Insurance Commissioners, and the sums required to meet expenditure properly incurred by approved societies and Insurance Committees for the purposes of such benefits and the administration of such benefits shall be paid out of that fund, and the foregoing provisions of this Act, with respect to the National Health Insurance Fund, shall, with the necessary modifications, apply to the Scottish National Health Insurance Fund accordingly.

(3) The expression "Local Government Board" means the Local Government Board for Scotland (in this section referred to as the Board): Provided that, as regards the making of regulations respecting sums payable out of the Local Taxation (Scotland) Account, the said expression means the Secretary for Scotland; the expression "Local Taxation Account" means the Local Taxation (Scotland) Account; and the expression "inspector of the Local

Government Board" includes a person acting under section seven or section eight of the Public Health (Scotland) Act, 1897: S. 80 (3)

(4) The expression "county borough" means a burgh or police burgh within the meaning of the Local Government (Scotland) Act, 1889 (in this section referred to as the Act of 1889), containing within the police boundaries thereof according to the census of nineteen hundred and eleven a population of twenty thousand or upwards, and includes the burgh of Dumfries and the police burgh of Maxwelltown, as if they were a single burgh, and all other burghs and police burghs shall, for the purposes of this Part of this Act, be held to be within the county, and unless already represented on the county council shall, for the purposes of this Part of this Act, be represented thereon as may be determined by the Secretary for Scotland: Provided that references to the council of a county borough shall, in the case of Dumfries and Maxwelltown, be construed as references to a joint committee of the town councils thereof which shall from time to time be appointed subject to the provisions of section seventy-six of the Act of 1889:

(5) References to a county and the county council thereof shall, as regards—

(*a*) the counties of Kinross and Clackmannan; and

(*b*) the counties of Elgin and Nairn; be construed in each case as references respectively to a combination of the two recited

S. 80 (5)

counties and to a joint committee of the county councils thereof which shall from time to time be appointed subject to the provisions of section seventy-six of the Act of 1889:

(6) The minimum number of an Insurance Committee for any area containing a population of less than forty thousand shall be twenty-five instead of forty; and where a number less than forty is fixed, the constitution of the committee may be varied as may be prescribed, so, however, that the proportion of members to be appointed by insured persons and by a county or town council and the number of members possessing a medical qualification shall not be altered:

(7) No person, except a medical practitioner qualified as such, shall be qualified for appointment as member of an Insurance Committee by a county or town council unless he is a member of a local authority within the county under the Public Health (Scotland) Act, 1897, or of the town council, as the case may be; but this requirement shall not apply to women if women so qualified are not available:

(8) Before submitting for approval a scheme prescribing areas to be assigned to district committees, the Insurance Committee of a county shall consult with the county council, or any committee thereof appointed for the purpose, and shall consider any representation received from them:

(9) Where, owing to sparseness of population, difficulties of communication, or other special

circumstances, they consider it desirable, an Insurance Committee shall have power, with the consent of the Scottish Insurance Commissioners, to modify or suspend any benefits for the administration of which they are responsible; but, where such modification or suspension takes place, provision shall be made by the Committee, with the like consent, for the increase of other benefits or the grant of one or more additional benefits to an amount equivalent to the value of the modification or suspension: S. 80 (9)

"**Modify or suspend any benefit.**"—It is anticipated that in many parts of the Highlands and islands of Scotland, the arrangements of s. 15 for the administration of medical benefit may have to be modified or suspended, owing to difficulties of communication. The proportion of uncertified deaths in many parts is very high owing to difficulties in obtaining medical attendance.

(10)—(*a*) If it appears to any county council that, having regard to the number of employed contributors resident in the county who are not members of any society approved under the foregoing provisions of this Act, it is desirable that steps should be taken for the establishment under the council of an approved society for the county (in this section referred to as a county society) the council may, at any time before the expiration of one year from the commencement of this Act, submit to the Insurance Commissioners a scheme for the establishment of a county society;

(*b*) The scheme may provide for—

(i) the representation of the council on the committee of management of the society;

S. 80 (10) (b)

(ii) The appointment of officers subject to the approval of the Council;

(iii) the delegation of powers to committees;

(iv) the giving of security by means of a charge upon the general purposes rate or otherwise;

(v) the restriction of membership to insured persons resident in the county not being members of any other approved society;

(vi) the reduction of benefits below the minimum rates fixed by this Part of this Act; and

(vii) such other matters as may appear necessary, and in particular such further modifications of the provisions of this Part of this Act with respect to approved societies as may be required for the purpose of adapting those provisions to the case of a county society;

(*c*) Where such a scheme has been approved by the Scottish Insurance Commissioners, the provisions of the scheme shall have effect, notwithstanding anything to the contrary in this Part of this Act; and subject to those provisions, the county society shall be an approved society for all the purposes of this Part of this Act;

(*d*) A county council desirous of submitting a scheme under this section may, at any time after the passing of this Act, take such steps as appear necessary with a view to ascertaining what insured persons resident in the county

are eligible and willing to become members of the proposed county society, and generally for the formation of the society ; S. 80 (10) (d)

(11) A person appointed in terms of the section of this Act relating to excessive sickness to hold an inquiry shall report to the authority appointing him, and any further action following on such inquiry which, in accordance with the provisions of that section, is to be or may be taken by the person making the inquiry, shall not be taken by him, but may be taken by that authority after consideration of the report, and that section shall be read and construed accordingly ;

(12) Expenses incurred by a county council under this Part of this Act shall be defrayed out of the general purposes rate ; provided that, notwithstanding anything contained in the Act of 1889, the ratepayers of a police burgh shall not be assessed by the county council for any such expenses unless the police burgh is, for the purposes of this Part of this Act, held to be within the county ; and provided further that, with respect to every burgh within the meaning of the Act of 1889, which is, for the purposes of this Act, held to be within the county, subsection three and subsection four of section sixty, and section sixty-six, of the Act of 1889, shall, so far as applicable, have effect as if such expenses were expenditure therein mentioned :

(13) Expenses incurred by a town council under this part of this Act (whether under requisition from the county council or otherwise) shall

S. 80 (13) be defrayed out of the public health general assessment, but shall not be reckoned in any calculation as to the statutory limit of that assessment; and references to the borough fund or borough rate shall be construed accordingly:

(14) The expression "borough" and the expression "urban district" mean a burgh or police burgh within the meaning of the Act of 1889, and the expressions "rural districts" and "council of a rural district," unless inconsistent with the context, mean respectively a district of a county within the meaning of the said Act and the district committee thereof: Provided that the population limit prescribed for boroughs and urban districts in the subsection of this Act relating to the appointment of district committees for these areas shall not apply:

(15) The expression "Lord Chief Justice" means the Lord President of the Court of Session:

(16) The expression "county court" means the sheriff court; and, in lieu of an appeal from the county court upon any question of law, there shall be substituted an appeal from the sheriff upon any question of law in terms of subsection (17) (*b*) of the Second Schedule to the Workmen's Compensation Act, 1906: Provided that the decision of either division of the Court of Session on such appeal shall be final:

(17) The expression "workhouse" means poorhouse; "coverture" means marriage; "levy any distress or execution" means use any diligence; "ejectment" means removing;

"amount of judgment debt" means amount decerned for; "registrar of the county court" means court exercising jurisdiction in the proceedings; "certified midwife" means any midwife possessing such qualifications as may be prescribed; "public elementary school" means public school; "Public Health Acts" means the Public Health (Scotland) Acts, 1897 and 1907; "Local Loans Act, 1875," means the Local Authorities Loans (Scotland) Acts, 1891 and 1893; and "High Court" means Court of Session: S. 80 (17)

(18) Unless inconsistent with the context, references to the Elementary School Teachers' Superannuation Act, 1898, to the deferred annuity fund under that Act, and to the Board of Education, shall be construed, respectively, as references to section fourteen of the Education (Scotland) Act, 1908, and a scheme thereunder, to the Scottish Teachers' Superannuation Fund, and to the Scotch Education Department.

81. This Part of this Act, in its application to Ireland, shall be subject to the following modifications:— Application to Ireland.

(1) For the purpose of carrying this Part of this Act into effect in Ireland, there shall be constituted, as soon as may be after the passing of this Act, Commissioners for Ireland (to be called the Irish Insurance Commissioners), with a central office in Dublin, and with such branch offices in Ireland as the Treasury may think fit, and the Irish Insurance

S. 81 (1)

Commissioners, of whom one at least shall be a duly qualified medical practitioner, shall be appointed by the Treasury, and may appoint such officers, inspectors, referees, and servants for the purposes aforesaid as the Irish Insurance Commissioners, subject to the approval of the Treasury, may determine, and the provisions of this Part of this Act with respect to the payment of the salaries and remuneration of the Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and with respect to the payment of the expenses incurred by the Treasury or the Insurance Commissioners in carrying this Part of this Act into effect shall, with the necessary modifications, apply to the payment of the salaries and remuneration of the Irish Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them and to the payment of expenses incurred by the Treasury or the Irish Insurance Commissioners in carrying this Part of this Act into effect in Ireland, and for the purpose aforesaid the Irish Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them shall respectively have all the like powers and duties as are by the provisions of this Act conferred and imposed on the Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and references in those provisions to the Insurance Commissioners shall be construed as references to the Irish Insurance Commissioners :

(2) All sums received from contributions under this Part of this Act in respect of insured persons resident in Ireland and all sums paid out of moneys provided by Parliament in respect of benefits under this Part of this Act to such persons and the expenses of administration of such benefits shall be paid into a fund to be called the Irish National Health Insurance Fund, under the control and management of the Irish Insurance Commissioners, and the sums required to meet expenditure properly incurred by approved societies and Insurance Committees for the purposes of such benefits and the administration of such benefits shall be paid out of that fund and the foregoing provisions of this Act with respect to the National Health Insurance Fund shall, with the necessary modifications, apply to the Irish National Health Insurance Fund accordingly: S. 81 (2)

(3) The provisions of this Part of this Act conferring a right to exemption shall extend to any person employed in harvesting or other agricultural work who proves—

(*a*) that he is an Irish migratory labourer, that is to say, a person who, having a permanent home at some place in Ireland, has temporarily removed to some other place in Ireland or to Great Britain for the purpose of obtaining such employment; and

(*b*) that he ordinarily resides at such permanent home for not less than twenty-six weeks in the year and is not employed within the meaning of this Part of this Act whilst so resident;

S. 81 (3)

and any contributions paid in Great Britain by the employer of a person holding a certificate of exemption by virtue of this provision shall be transferred to the Irish Insurance Commissioners for the purpose of being carried to such account and being dealt with in such manner as may be prescribed by the regulations made in that behalf by the Irish Insurance Commissioners:

"**Exemptions**"—See s. 2.

'**Contributions paid in Great Britain**'—Though this section begins with the words, "This Part of this Act, in its application to Ireland, shall be subject to the following modifications," it is clearly the intention of Parliament that the provisions of this subsection should be applied in England. See s. 4 (4).

(4) Employment in Ireland as an outworker, where the wages or other remuneration derived from the employment are not the principal means of livelihood of the person employed, shall be deemed to be included amongst the excepted employments specified in Part II of the First Schedule to this Act:

(5) The reference to the Lord Chancellor shall be construed as a reference to the Lord Chancellor of Ireland;

The reference to the Lord Chief Justice shall be construed as a reference to the Lord Chief Justice of Ireland;

The reference to the Local Government Board, as regards the making of regulations with respect to payments out of the Local Taxation Account, shall be construed as a reference to the Lord Lieutenant, and other references to the Local Government Board shall be

construed as references to the Local Government Board for Ireland, and the reference to the Local Taxation Account shall be construed as a reference to the Local Taxation (Ireland) Account: S. 81 (5)

(6) A reference to the Housing of the Working Classes (Ireland) Acts, 1890 to 1908, shall be substituted for the reference to the Housing of the Working Classes Acts, 1890 to 1909, a reference to the Public Health (Ireland) Acts, 1878 to 1907, shall be substituted for the reference to the Public Health Acts and a reference to the rate or fund applicable to the purposes of the Public Health (Ireland) Acts, 1878 to 1907, shall be substituted for any reference to the borough rate or borough fund:

(7)—(*a*) If it appears to any county council that, having regard to the number of employed contributors resident in the county who are not members of any society approved under the foregoing provisions of this Act it is desirable that steps should be taken by the council for the establishment of an approved society for the county under the council (in this section referred to as a county society), the council may, at any time before the expiration of one year from the commencement of this Act, submit to the Irish Insurance Commissioners a scheme for the establishment of a county society;

(*b*) The scheme may provide for—

(i) the representation of the council on the committee of management of the society;

(ii) the appointment of officers subject to the approval of the council;

S. 81 (7) (b)

(iii) the delegation of powers to committees;

(iv) the giving of security by means of a charge upon the county fund or otherwise;

(v) the restriction of membership to insured persons resident in the county not being members of any other approved society;

(vi) the reduction of benefits below the minimum rates fixed by this Part of this Act; and

(vii) such other matters as may appear necessary, and in particular such further modifications of the provisions of this Part of this Act with respect to approved societies as may be required for the purpose of adapting those provisions to the case of a county society;

(*c*) Where such a scheme has been approved by the Irish Insurance Commissioners, the provisions of the scheme shall have effect, notwithstanding anything to the contrary in this Part of this Act; and, subject to those provisions, the county society shall be an approved society for all the purposes of this Part of this Act;

(*d*) A county council desirous of submitting a scheme under this section may, at any time after the passing of this Act, take such steps as appear necessary with a view to ascertaining what insured persons resident in the county are eligible and willing to become members of the proposed county society, and generally for the formation of the society:

(8) The provisions with respect to the appoint-

ment of Insurance Committees shall have effect, subject to the following modifications, namely :— S. 81 (8)

The number of members of an Insurance Committee shall be twenty-four, and of that number—

(*a*) twelve shall be appointed in such manner as may be prescribed by regulations of the Irish Insurance Commissioners so as to secure representation of the insured persons resident in the county or county borough who are members of approved societies, and who are deposit contributors, in proportion, as nearly as may be, to their respective numbers, and the regulations so made shall provide for conferring on the approved societies which have members resident in the county or county borough the power of appointing representatives of such members, and, where an association of deposit contributors resident in the county or county borough has been formed under such regulations as aforesaid, for conferring on such association the power of appointing the representatives of the deposit contributors ;

(*b*) eight (of whom at least one shall be a member of a local sanitary authority and at least two shall be women) shall be appointed by the council of the county or county borough ; and

(*c*) four (of whom at least two shall be duly qualified medical practitioners) shall be

S. 81 (8) (c)

appointed by the Irish Insurance Commissioners:

In the Irish Local Insurance Committees there are no medical practitioners directly elected by practitioners, nor chosen by the councils, but the Commissioners appoint "at least two," whereas in England they appoint "at least one" medical practitioner [S. 59 (2)]. The smaller proportion of medical practitioners on the committees is doubtless due to the fact that there is no medical benefit in Ireland.

Provided that the Irish Insurance Commissioners may, where any part of the cost of sanatorium benefit is defrayed by the council of the county or county borough, increase the representation of the council and make a corresponding diminution in the representation of the insured persons:

(9) An insured person in Ireland shall not be entitled to medical benefit under this Part of this Act, and the provisions with respect to medical benefit shall not apply:

Provided that medical benefit for an insured person being a member of an approved society shall be deemed to be included amongst the additional benefits specified in Part II of the Fourth Schedule to this Act, and that such medical benefit when provided shall be administered by the Insurance Committee in accordance with the provisions of this Part of this Act unless the Irish Insurance Commissioners otherwise direct:

In the Bill as originally introduced medical benefit was provided and the Irish Nationalist Party is responsible for its omission. The proviso that if medical benefit is given as an additional benefit by an approved society, it shall be administered by the Insurance Committee, not by the society, is inserted at the request of the Irish medical profession that it should be administered in the same way as set forth in s. 15 for England. Cf. s. 14 (1) as to additional benefits "in the nature of medical benefits."

(10) As respects employed contributors in Ireland, the employed rate shall be the rate specified in Part II of the Second Schedule to this Act, and the contributions by the contributors and contributions by the employers shall be at the rates specified in Part II instead of the rates specified in Part I of that schedule, and there shall be credited to the society of which any employed contributor in Ireland is a member or, if he is a deposit contributor, to his account in the Post Office fund, the difference between the amount of contributions actually paid by or in respect of him at the rate specified in Part II of the Second Schedule to this Act and the amount which would have been paid if those contributions had been at the rate specified in Part I of that schedule, and the amount of that difference shall be treated as having been expended on benefits and the proper proportion thereof shall accordingly be paid out of moneys provided by Parliament: S. 81 (10)

SECOND SCHEDULE.

PART II.

Employed Rate in Ireland.

In the case of men		$5\frac{1}{2}d.$ a week.
,, ,, women		$4\frac{1}{2}d.$,,

Contributions by Employers and Employed Contributors.

To be paid by the employer		$2\frac{1}{2}d.$ a week.
,, ,, contributor	Men,	$3d.$,,
	Women,	$2d.$,,

In the case of employed contributors of either sex of the age of 21 or upwards whose remuneration does not include the provision of board and lodging by their employer, and the rate of whose

S. 81 (10) remuneration does not exceed 25. 6d. a working day, the following shall be the rates of contribution :—

Where the rate of remuneration does not exceed 1s. 6d. a working day—

		A week.
To be paid by the employer	For men,	4½d.
	,, women,	3½d.
,, out of moneys provided by Parliament		1d.

Where the rate of remuneration exceeds 1s. 6d. but does not exceed 2s. a working day—

		A week.
To be paid by the employer	For men,	4d.
	,, women,	3d.
,, ,, contributor		½d.
,, out of moneys provided by Parliament		1d.

Where the rate of remuneration exceeds 2s. but does not exceed 2s. 6d. a working day—

		A week.
To be paid by the employer	For men,	3½d.
	,, women,	2½d.
,, ,, contributor		2d.

(11) The foregoing provisions of this section as to the crediting of differences shall apply in the case of voluntary contributors resident in Ireland, with the modification that, where the voluntary rate is not the same as the employed rate, the difference to be credited shall be the difference between the amount of contributions actually paid at the voluntary rate and the amount which would have been paid if the contributor had been a voluntary contributor resident in Great Britain :

Provided that, in the case of a married woman resident in Ireland becoming a voluntary contributor at reduced rates of benefit under the special provisions with respect to married women, the rate of contributions payable by her shall be one penny half-penny a week instead

of three pence a week, and the difference to be credited shall be one penny half-penny a week accordingly : S. 81 (11)

(12) In ascertaining the voluntary rate applicable to voluntary contributors in Ireland in cases where that rate is not the same as the employed rate, regard shall be had both to the provisions of this section as to the crediting of differences and to the proportion of benefits to be paid out of the contributions payable by or in respect of such contributors :

(13) Rules of an approved society or Insurance Committee under this Part of this Act may provide for the inspection of medical relief registers by officers of the society or Committee at all reasonable times, and for the furnishing to the society or Committee of such medical certificates as may be necessary for the purposes of administration of the benefits administered by the society or Committee, and for the payment by the society or Committee to duly qualified medical practitioners of such remuneration in respect of the furnishing of those certificates as the Irish Insurance Commissioners may sanction, and all payments so made by the society or Committee shall be treated as expenses of administering the benefits aforesaid :

(14) If a grant is made to a county council or county borough council out of any sum made available under any other Act of the present session for the purposes of the provision of or making grants in aid to sanatoria and other institutions for the treatment of tuberculosis or

S. 81 (14) such other diseases as the Local Government Board may, with the approval of the Treasury, appoint, the council may, subject to the sanction of the Local Government Board, exercise for all or any of those purposes the powers given to them by Part II of the Tuberculosis Prevention (Ireland) Act, 1908, in like manner as if those purposes were purposes authorised by that Part of that Act, and any expenses of the council so far as not defrayed out of the grant shall be defrayed in manner provided by that Part of that Act:

(15) For the purposes of proceedings in Ireland under the provisions of this Part of this Act relative to disputes, regulations of the Irish Insurance Commissioners may apply all or any of the provisions of the Common Law Procedure (Ireland) Act, 1856, with respect to arbitration:

(16) The special provisions with respect to the reduction of contributions in cases where the employer is liable to pay wages during sickness shall have effect, subject to the modification that, where the rate of contributions payable by the employed contributor is one half-penny a week, the weekly contributions payable by the employer shall be reduced by one penny half-penny (or, if the employed contributor is a woman, one penny), and the weekly contributions payable by the employed contributor shall be reduced by one half-penny:

(17) In the special provisions as to persons becoming certificated teachers references to the

Board of Education, to the Elementary School Teachers (Superanuation) Act, 1898, and to a Public Elementary School shall respectively be construed as references to the Superintendent of Teachers Pension Office, to the National School Teachers (Ireland) Act, 1879, and to a National School, and any sums paid to the Superintendent of the Teachers Pension Office in pursuance of those provisions shall be carried to the Pension Fund established under the last mentioned Act and shall be dealt with in accordance with rules under that Act: S. 81 (17)

(18) As respects insured persons in Ireland, "six-elevenths" shall be substituted for "four-sevenths" and (in the case of women) "four-ninths" shall be substituted for "one-half":

(19) For the reference to the registrar of the county court, there shall be substituted a reference to a magistrate appointed under the Constabulary (Ireland) Act, 1836:

(20) For references to a duly certified midwife there shall be substituted references to a midwife having such qualifications as may be prescribed.

Establishment of Commissioners for Wales.

82.—(1) For the purpose of carrying this Part of this Act into effect in Wales, there shall be constituted, as soon as may be after the passing of this Act, Commissioners for Wales (to be called the Welsh Insurance Commissioners) with a central office in such town in Wales as the Treasury may determine, and with such branch offices in Wales as the Treasury may think fit, and the Welsh Insurance Commissioners, of whom one at least

S. 82 (1) shall be a duly qualified medical practitioner, shall be appointed by the Treasury, and may appoint such officers, inspectors, referees, and servants for the purposes aforesaid as the Welsh Insurance Commissioners, subject to the approval of the Treasury, may determine, and the provisions of this Part of this Act with respect to the payment of the salaries and remuneration of the Insurance Commissioners, and the officers, inspectors, referees, and servants appointed by them, and with respect to the payment of the expenses incurred by the Treasury or the Insurance Commissioners in carrying this Part of this Act into effect shall, with the necessary modifications, apply to the payment of the salaries and remuneration of the Welsh Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and to the payment of expenses incurred by the Treasury or the Welsh Insurance Commissioners in carrying this Part of this Act into effect in Wales, and for the purpose aforesaid the Welsh Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them shall respectively have all the like powers and duties as are by the provisions of this Act conferred and imposed on the Insurance Commissioners and the officers, inspectors, referees, and servants appointed by them, and references in those provisions to the Insurance Commissioners shall be construed as references to the Welsh Insurance Commissioners.

(2) All sums received from contributions under this Part of this Act in respect of insured persons resident in Wales, and all sums paid out of moneys

provided by Parliament in respect of benefits under this Part of this Act to such persons, and the expenses of administration of such benefits shall be paid into a fund to be called the Welsh National Health Insurance Fund, under the control and management of the Welsh Insurance Commissioners, and the sums required to meet expenditure properly incurred by approved societies and Insurance Committees for the purposes of such benefits and the administration of such benefits shall be paid out of that fund, and the foregoing provisions of this Act, with respect to the National Health Insurance Fund, shall, with the necessary modifications, apply to the Welsh National Health Insurance Fund accordingly. S. 82 (2)

(3) The powers of the Local Government Board with respect to the distribution of any sum available for the purpose of the provision of or making grants in aid to sanatoria and other institutions shall, as respects the part thereof apportioned to Wales, be exercised by the Welsh Insurance Commissioners.

(4) If before or within twelve months after the commencement of this Act there is established for Wales by royal charter an association for the purpose of providing sanatoria and other institutions for the treatment and prevention of tuberculosis or such other diseases as the Local Government Board, with the approval of the Treasury, may appoint, the Welsh Insurance Commissioners in making and the Treasury in approving grants from any such sum as is in the last preceding subsection mentioned shall have regard to the provision of such institu-

S. 82 (4) tions which may have been made, or may be proposed to be made, by the association.

Joint committee of Commissioners.

83.—(1) There shall be constituted as soon as may be after the passing of this Act, in accordance with regulations to be made by the Treasury, a joint committee of the several bodies of Commissioners appointed for the purposes of this Part of this Act, consisting of such members of each such body selected in such manner as may be provided by the regulations and of a chairman and other members (not exceeding two in number) to be appointed by the Treasury, and the chairman shall not by reason of his office be incapable of being elected to or voting in the Commons House of Parliament.

"**Regulations.**"—See subs. (4) hereof, and Appendix I.

(2) The joint committee may make such financial adjustments as may be necessary between the several funds under the control and management of the several bodies of Commissioners, and shall exercise and perform such powers and duties of the several bodies of Commissioners under this Part of this Act, either alone or jointly with any of those bodies, as may be provided by such regulations.

"**Financial adjustments.**"—One difficulty in financial adjustments between the various divisions of the United Kingdom arises from differences in the normal sickness experience, which suggest different actuarial tables for England, Scotland, Ireland, and Wales, with reserve values and transfer values computed upon different bases, and questions would then arise upon the transfer of a member from a society in one division to a society in another as to the correct transfer value to be assigned to him when the liability of the society receiving him differs from that of the society which he leaves. Clearly the operation of s. 31, without modification, would work some hardship in such a case. Uniform tables for the whole Kingdom seem to be the only solution.

The problem is further complicated by the fact that there is no true

mutuality in transfers; there is, for instance, a steady emigration from Scotland to England, and there is a marked difference in the average ages of the migrant and remigrant streams. S. 83 (2) —

As to the effects of the provisions for reserve values upon the different members of the United Kingdom, and their prospect of extended benefits, see ss. 8 (9), 55 (1) and (4), and notes thereto.

(3) Amongst the powers so exerciseable by the joint committee shall be included a power of making regulations as to the valuation of societies and branches which have amongst their members persons resident in England, Scotland, Ireland, and Wales, or any two or any three of such parts of the United Kingdom, and the regulations so made shall require that, for the purposes of the provisions of this Part of this Act relating to valuations, surpluses, deficiencies and transfers, the members resident in each such part shall be treated as if they formed a separate society.

The provision as to separation of the funds of societies according to geographical distribution is clearly necessary if different actuarial tables are to be used for the valuation of branches within different geographical boundaries. See s. 40 and Appendix I, 4.

(4) Regulations made by the Treasury under this section shall be laid before Parliament as soon as may be after they are made, but, if an Address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, His Majesty in Council may annul the regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

"It shall thenceforth be void." — Most of the Statutes requiring orders, minutes, regulations, and the like, to be laid before Parliament,

S. 83 (4) — provide that they shall come into force only after lying on the table for the prescribed time. (See for instance 33 & 34 Vict. c 75, s. 97.) These regulations, on the contrary, are to be good, unless and until avoided by His Majesty in Council, upon an address, and then are only to be void "thenceforth." Apparently, therefore, prior proceedings of the committee would not be avoided by such amendment; but the committee itself would cease to exist, its appointment being void from that time forth.

"Anything previously done."—A question of considerable difficulty might arise in the event of annulment of regulations appointing the committee, as to whether subsidiary regulations, previously made by the committee, were thereby avoided for the future. "When authority is given by any Statute to make a By-law, and the Statute is subsequently repealed, the By-law ceases to be operative" (Lumley, By-laws, p. 65). But a Statute repealed is not avoided "thenceforth" only, but avoided *ab initio*. "It has long been established that, when an Act of Parliament is repealed, it must be considered, except as to transactions past and closed, as if it had never existed" (per Lord Tenterden, C.J., in *Gastier* v. *Ellison*, 9 B. & C. 750 at p. 752. See also *R.* v. *Denton*, 18 Q.B. 761).

The Treasury Regulations under s. 82 are, in fact, voidable by His Majesty in Council, and if avoided, will presumably be deemed to have been valid until avoided, like voidable contracts (*Duncan* v. *Dixon*, 44 Ch.D. 211, 59 L.J. Ch. 437; *Valentini* v. *Canali*, 59 L.J.Q.B. 74, 4 Q.B.D. 166).

The case most directly in point, however, is that of *Smith* v. *Galloway* [1898] 1 Q.B. 71], which clearly establishes that a rule made by a friendly society remains in force though the statutory authority under which it was made is repealed; and it is submitted that the analogy holds good, and that rules made by the committee would continue valid, although the authority of the committee were itself annulled.

PART II

Unemployment Insurance

S. 84

Right of workmen in insured trades to unemployment benefit.

84.—Every workman who, having been employed in a trade mentioned in the Sixth Schedule to this Act (in this Act referred to as "an insured trade"), is unemployed, and in whose case the conditions laid down by this Part of this Act (in this Act referred to as "statutory conditions") are fulfilled, shall be entitled, subject to the provisions of this Part of this Act, to receive payments (in this Act referred to as "unemployment benefit") at weekly or other prescribed intervals at such rates and for such periods as are authorised by or under the Seventh Schedule to this Act, so long as those conditions continue to be fulfilled, and so long as he is not disqualified under this Act for the receipt of unemployment benefit:

Provided that unemployment benefit shall not be paid in respect of any period of unemployment which occurs during the six months following the commencement of this Act.

"**Every workman.**"—The word workman includes workwoman [Interpretation Act, 52 & 53 Vict. c. 63, s. 1 (1)]. See the definition given in s. 107 (1) and note thereto *infra*.

"**Having been employed.**"—In order to draw benefit under this part of the Act a man must have been employed in an insured trade within four years and six months last past [s. 86 (1)].

S. 84 — **"In a trade mentioned in the Sixth Schedule."**—The interpretation of the Schedule is controlled by subs. (2) of section 107, which provides that "regard shall be had to the nature of the work in which the workman is engaged rather than to the business of the employer by whom he is employed." But see s. 104 (a).

"Is unemployed."—See s. 86 (3).

"Statutory conditions."—See ss. 86, 91 (1) (c).

"Shall be entitled."—The workman is entitled to the payment of the full benefits unless under the provisions of s. 93 (2), the Board of Trade have temporarily reduced the benefits, in consequence of the insolvency of the fund, or have varied the benefits under the powers conferred by the Seventh Schedule. See the last paragraph thereof and note thereto. The workman is liable under s. 101 (5) to repay to the fund any benefit received by him while not so entitled.

"Unemployment benefit."—For the rate and periods of unemployment benefit, see the Seventh Schedule set out below.

"Disqualified."—See s. 87, and the notes thereto *infra*.

The Sixth Schedule is as follows:—

SIXTH SCHEDULE.

List of Insured Trades for the purposes of Part II of this Act relating to Unemployment Insurance.

(1) Building; that is to say, the construction, alteration, repair, decoration, or demolition of buildings, including the manufacture of any fittings of wood of a kind commonly made in builders' workshops or yards.

"Construction."—See 60 & 61 Vict. c. 37, s. 7 (1). The insertion of iron girders into a building six months after its erection, for the purpose of strengthening it, is construction [*Hoddinott* v. *Newton* (1901), A.C. 49].

"Construction, repair, demolition—these three operations cover, I think, every varying phase in the life of a building from its beginning to its end" (per Lord Macnaghten, *ibid.*, at pp. 54, 55). See also *Dudge* v. *Conway*, 17 T.L.R. 355, and *Hebbs and Samuel* v. *Bradley*, 37 Sc. L.R. 532.

"Building."—Though the verb "building" has never been interpreted by the courts, there are numerous decisions as to what is "a building." Thus, a structure of wood measuring 16 ft. by 13 ft., and intended to be permanently used as a shop is a building within 18 & 19 Vict. c. 122, although only resting on the surface of the soil (*Stevens* v. *Gourlay*, 7 C.B.N.S. 99). A bay window (*Coles* v. *Sims*, 5 D.M. and G. 1) and a high wall (*Child* v. *Douglas*, Kay 560) have been held to be buildings; but a hoarding is not a building under the Metropolitan Open Spaces Acts, 1877 and 1881, and the Disused Burial Grounds Act, 1884, though it is a "building or erection" (*Pocock* v. *Gillman*, 1 Cab. and Ell., 104)

"One may say of this or that structure, this or that is not a building; but no general definition can be given, and our lexicographers do not attempt it. Without, therefore, presuming to do what others have failed to do, I may venture to suggest that by a building is usually understood a structure of considerable size, and intended to be permanent or at least to endure for a considerable time." (Per Byles J. in *Stevens* v. *Gourlay*, 7 C.B.N.S. 99, at p. 112.)

"**The manufacture of any fittings of wood.**"—Joiners' manufacturing doors, window frames, and the like, are included in Part II of the Act, although they work in a factory which is in no way connected with a builder's business, if the articles made are of a kind "commonly made" in a builder's yard.

"**Commonly made.**"—There is no legal decision on the exact meaning of the word "commonly" except in the phrase "commonly understood" (45 & 46 Vict. c. 50 s. 241).

"We think 'commonly understood' means commonly understood by any person . . . , that no person would be misled." (Per Lopes, J., in *Moorhouse* v. *Livesey*, 15 Q.B.D. 273 on p. 279.)

"Commonly—as a usual circumstance; as a general thing, in ordinary cases; usually, ordinarily, generally." (Murray's *Dictionary*.)

It is submitted that to bring fittings of wood within this definition they must be such as it is the general practice of builders to make in their yards, not merely such as are frequently made there.

(2) Construction of works; that is to say, the construction, reconstruction, or alteration of railroads, docks, harbours, canals, embankments, bridges, piers or other works of construction.

Cf. the definition in the Workman's Compensation Act, 1897:—

"'Engineering work' means any construction or alteration or repair of a railroad, harbour, dock, canal or sewer, and includes any other work for . . ."

It has been decided under that section that the employment must be on or in or about the works themselves. [*Chambers* v. *Whitehaven Harbour Commissioners* (1899), 2 Q.B. 132].

"**Railroads.**"—This includes everything which is a necessary part of a railway as a going concern. (*Fullick* v. *Evans*, 17 T.L.R. 346; per Romer, L.J. See remarks of A. C. Smith, M.R., in same case).

"**Harbours.**"—"Harbour" for the purposes of the Merchant Shipping Acts includes "harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter or ship and unship goods or passengers" (57 & 58 Vict. c. 60, s. 742.)

"**Embankments, bridges, piers.**"—These words are not in the corresponding section of the Workman's Compensation Act, 1897, though "piers" may perhaps be included under harbours.

"**Other works of construction.**"—It has been held that the words "any other work . . ." in the definition already referred to, include any kind of constructional work, and particularly the addition of a further story to an existing building. (*Cosgrave* v. *Partington*, 17 T.L.R. 39).

S. 84 (3) Shipbuilding; that is to say, the construction, alteration, repair or decoration of ships, boats or other craft by persons not being usually members of a ship's crew, including the manufacture of any fittings of wood of a kind commonly made in a shipbuilding yard.

"**Construction.**"—See note to paragraph (1).

"**Ships.**"—Under the Merchant Shipping Act, 1894, "'Ships' includes every description of vessel used in navigation not propelled by oars," and "'Vessel' includes any ship or boat or any other description of vessel used in navigation."

On close examination these definitions leave something to be desired.

"**Boats or other craft.**"—The word "boat" may include a steamboat (*Tisdell* v. *Combe*, 7 L.J.M.C. 48). The word "craft" may include or exclude almost anything that floats. Cf. 1 and 2 W. 4, c. 76, s. 51, "ship, lighter, barge or other craft"; 1 & 2 Vict. c. 101, s. 4 "lighter, vessel, barge or other craft"; held not to include a ship (*Blanford* v. *Morrison*, 19 L.J.Q.B. 533); 7 & 8 G. 4, c 85, s. 37, "wherry, lighter, or other craft," held not to include a steam tug (*Reed* v. *Ingham*, 23 L.J.M.C. 156); and "risks of craft or lighter," when Day, J., held that "The word 'craft' in this policy clearly was intended to cover both steamer and barge." (*Russell* v. *Lodge*, 6 T.L.R. 353.)

"**Members of a ship's crew.**"—The fact that they do alterations, repairs, decorations, etc., does not bring the members of a ship's crew within the unemployment provisions. The "crew" does not include employees of a cargo owner voyaging in charge of cattle, although they help to work the ship (*Anglo-Argentine Agency* v. *Temperley*, 1899, 2 Q.B. 403).

"**Manufacture of any fittings.**"—See note to paragraph (1) of this Schedule.

Ship-breaking is not included as an insured trade.

(4) Mechanical engineering, including the manufacture of ordnance and fire-arms.

"**Mechanical engineering.**"—"The term engineer, as pointed out in the special instructions for the census of 1891 (No. 14) is a vague term equally applicable to a civil engineer, an engine driver, and an engine maker" (*Hudson on Building Contracts*, Vol. I, p. 30).

"Engineering, the art of designing and constructing works, embraces a very wide range of subjects, and the different departments into which the profession is now divided do not admit of very strict definition; but it may be mentioned that mechanical engineering includes machinery, mill-work, steam engines, iron shipbuilding, agricultural implements, etc." (*Encyclopædia Britannica*, 9th Edition, Vol. IX, p. 215).

"In present use the 'engineer' in this sense (specifically 'mechanical engineer') is a maker of steam engines or of heavy machinery generally. In this sense the term is applied to the working artisan as well as to the employer of labour. . . . Engineering—the art and

science of the engineer's profession" (*Murray's Dictionary*, *Title*, *Engineer*, *Engineering*). S. 84 —

There can be no doubt that among engineers "engine driving" is not spoken of as "engineering" in spite of the census instructions, and Dr. Murray agrees in substance with the *Encyclopædia Britannica* that mechanical engineering is the making, repairing, etc., of machinery in a wide sense of the word. Query whether the phrase includes the making of tools other than machine tools (*e.g.*, the tempering and grinding of cold chisels in an engineering works), also the making of a machine or engine of wood, such as a pianola. The definition given in Funk and Wagnall's Dictionary "one who designs, constructs, or operates machines and machine tools," is obviously too wide, unless the verb "operate" be confined to machine tools. The Institution of Mechanical Engineers judiciously refrains from defining the term.

"**Ordnance and fire-arms.**"—"Ordnance—mounted guns, cannon" (*Murray's Dictionary*). Under the Gun License Act, 1870, "the term 'gun' includes a fire-arm of any description, and an air-gun or any other kind of gun from which any shot, bullet, or other missile can be discharged" (33 & 34 Vict. c. 57, s. 2). The term fire-arm, therefore, does not apparently include an air-gun. Dr. Murray defines it as "a weapon from which missiles are propelled by the combustion of gunpowder or other explosive."

A toy pistol has been held to be a fire-arm if capable of inflicting injury (*Campbell* v. *Hadley*, 40 J.P. 756).

(5) Ironfounding, whether included under the foregoing headings or not.

(6) Construction of vehicles; that is to say, the construction, repair, or decoration of vehicles.

"**Construction, &c.**"—See note to paragraph (1) *supra*.

(7) Sawmilling (including machine woodwork) carried on in connection with any other insured trade or of a kind commonly so carried on.

A large number of industries, such as spar and block-making will fall under paragraph (7) as well as under paragraph (3) or (1).

"**In connection with.**"—It is submitted that there must be some connection in the management of the sawmill, &c., with a builder's or ship-builder's yard, or a manufactory of builder's or ship-builder's fittings, or other insured trade. (See *G. W. Ry.* v. *Central Wales Ry.*, 5 Ry. and Canal Traffic Cases, 1.) The mere fact of supplying the trade cannot connect the "carrying on" of the business with an insured trade.

"**Commonly so carried on,**"—See note above and note to paragraph (1), "commonly." This last phrase is probably wide enough to include almost every sawmill.

The Solicitor-General in a popular exposition of Part II of the Act enumerates the following operatives as included in this Schedule, but

S. 84 — the statement can scarcely be taken as a considered opinion by a law officer :—

(1) Bricklayers, carpenters, plasterers, painters, plumbers, scaffolders, paperhangers, glaziers, slaters, and all the labour dependent upon them.

(2) All the work upon which navvies are engaged ; all the labour used in making harbours, docks, bridges, railways, reservoirs, and the like.

(4) Fitters, turners, borers, slotters, and other machinists of all kinds ; makers of ordnance and fire arms, millwrights, drillers, ironfounders, coppersmiths, blacksmiths, and all the unskilled labour which assists in these trades.

(3) Boilermakers, shipwrights, riveters, caulkers, boat and barge builders, and all shipyard labourers and the like.

(5) Coachbuilders, coachpainters, wheelwrights motor body builders, and allied trades.

SEVENTH SCHEDULE.

Rates and Periods of Unemployment Benefit.

In respect of each week following the first week of any period of unemployment, seven shillings, or such other rates as may be prescribed either generally or for any particular trade or any branch thereof.

"**Each Week.**"—A week in which the workman does two days' work only, during a period of unemployment is a week in respect of which he is entitled to benefit [s. 107 (1)], *infra*, and note thereto).

Under the Factory and Workshops Act, 1901, "'Week' means, the period between midnight on Saturday night and midnight on the succeeding Saturday night" (1 Edw. 7, c. 22, s. 156) ; but usually a week means any consecutive 7 days (*Bazalgette* v. *Lowe*, 24 L.J.Ch. 368, at p. 416). Cf. the Third Schedule (11) under s. 4 (2).

"**Following the first week.**"—It is sufficient if not more than six weeks of employment have intervened since the first week [s. 107 (1)].

"**Period of unemployment.**"—See note to the fifth paragraph hereof.

"**Such other rates.**"—The rates in insured trades may be temporarily reduced to not less than 5*s.* per week [s. 93 (2)], or may be permanently varied by regulations made under this Schedule, and s. 91 (1). See the last paragraph of the Schedule. In other trades to which the Act is extended by the Board of Trade under s. 103, the rates of benefit may be any rates prescribed in the order so extending the Act.

"**For any particular trade.**"—See note to s. 93 (2) *infra*.

Provided that, in the case of a workman under the age of eighteen, no unemployment benefit shall be paid while the workman is below the age of seventeen, and while the workman is of

the age of seventeen or upwards but below the age of eighteen, unemployment benefit shall only be paid at half the rate at which it would be payable if the workman was above the age of eighteen.

"**Age.**"—Note that s. 79 does not apply to this part of the Act, so that (except in Scotland) a particular age is attained on the commencement of the day previous to the anniversary of birth (cf. Old Age Pensions Act, 1911, s. 1).

The contributions of such workmen are two-fifths of the ordinary contributions, and are treated as such for the purpose of estimating rights to later benefits (Eighth Schedule); but not for the purpose of estimating right to benefit under this paragraph.

No workman shall receive unemployment benefit for more than fifteen or such other number of weeks as may be prescribed either generally or for any particular trade or branch thereof within any period of twelve months, or in respect of any period less than one day.

"**As may be prescribed,**" *i.e.*, under s. 91 (1).—The use of the word "prescribed" in this Schedule empowers the Board of Trade to act under that section.

"**Less than one day.**"—It appears from these words that benefit may be drawn in respect of a part of one week, following another week of unemployment.

No workman shall receive more unemployment benefit than in the proportion of one week's benefit for every five contributions paid by him under this Act:

Provided that for the purpose of the foregoing paragraph—

(*a*) in the case of a workman who satisfies the Board of Trade that he is over the age of twenty-one and has habitually worked at an insured trade before the commencement of this Act, there shall be deemed to be added to the number of contributions which he has actually paid five contributions for each period of three months or part of such period during which he has so worked before the commencement of this Act, up to a maximum of twenty-five contributions; and

(*b*) where, owing to the fact that the wages or other remuneration of a workman are paid at intervals greater than a week, or for any other like reason contributions are paid under Part II of this Act in respect of any workman at intervals greater than a week, that workman shall be entitled to treat each of such contributions as so many contributions as there are weeks in the period for which the contribution has been paid.

S. 84

"**Paid by him.**"—See s. 107 (1).

"**Over the age of twenty-one.**"—*i.e.*, at the time of receiving benefit. This paragraph is a proviso to the preceding one and controlled thereby.

"**Twenty-five contributions.**"—See the proviso to s. 84. At the expiry of six months from the commencement of the Act each workman regularly employed in the past three years will have fifty-one contributions to his credit, and will be entitled to draw benefit for ten weeks.

Any time during which a workman is, under Part II of this Act, disqualified for receiving unemployment benefit shall be excluded in the computation of periods of unemployment under this Schedule.

"**Disqualified.**"—*i.e.*, under s. 87, by trade dispute, misconduct, imprisonment, &c.

"**Computation of periods of unemployment.**"—A workman who has been disqualified cannot receive benefit in respect of the first week after the disqualification ceases, by virtue of this paragraph of the Schedule.

A period of unemployment shall not be deemed to commence till the workman has made application for unemployment benefit in such manner as may be prescribed.

"**Has made application**"—See ss. 86 (2), 91 (1) (*d*).
Note that a workman must make application for benefit a week before the period of benefit begins to run, and therefore, if he draws weekly, a fortnight before he begins to draw.

The power conferred by this Schedule on the Board of Trade to prescribe rates and periods of unemployment benefit shall not be exercised so as to increase the rate of benefit above eight shillings per week or reduce it below six shillings per week, or to increase the period of unemployment benefit above fifteen weeks, or to alter the proportion which the period of benefit bears to the number of contributions paid, except by rules confirmed by an order made in accordance with the provisions of this Act relating to special orders.

"**By this Schedule.**"—The use of the word "prescribed" confers the power to prescribe under s. 91 (1).

"**Special order.**"—See section 113.

Contributions by workmen, employers, and the Treasury.

85.—(1) The sums required for the payment of unemployment benefit under this Act shall be derived partly from contributions by workmen in the insured trades and partly from contributions by employers of

such workmen and partly from moneys provided by Parliament. S. 85 (1)

"**Partly from contributions by workmen.**"—The proportions of the various contributions are always the same, no matter how the total contribution is varied by regulation or special order. Thus the contributions of employers and workmen must always be equal [Eighth Schedule, s. 93 (2), s. 102], and the State contribution must always be two-thirds of each of the others [s. 85 (6)].

Contributions paid under a mistaken belief that the workman is in an insured trade shall be returned, s. 100 (2).

(2) Subject to the provisions of this Part of this Act, every workman employed within the United Kingdom in an insured trade, and every employer of any such workman, shall be liable to pay contributions at the rates specified in the Eighth Schedule to this Act.

"**Every workman.**"—The workman is himself liable to pay contributions under Part II of this Act; but by subs. (3) hereof that liability is suspended in the first instance unless reimposed by regulations. Contra under Part I (cf. s. 4). Under Part II a workman may be prosecuted for "neglect" to pay contributions [s. 101 (2)] and it is submitted that it is his duty under the Act to inquire of an employer who pays him full wages whether the contributions have in fact been paid. See note to subs. (3) hereof.

"**Every employer.**"—A contribution is payable by every employer who takes on a workman in an insured trade though on the last day of the week (see the Eighth Schedule, *infra*), unless the workman is sent by a Labour Exchange with which the employer has made an arrangement under s. 99 (1) hereof. The employer is not relieved of his duty to contribute under Part II, as he is under Part I, by an earlier payment made by another employer.

EIGHTH SCHEDULE.

Contributions for the Purposes of Part II of this Act relating to Unemployment Insurance.

Rates of Contribution from Workmen and Employers.

From every workman employed in an insured trade for every week he is so employed - -	$2\frac{1}{2}d$
From every employer by whom one or more workmen are employed in an insured trade, in respect of each workman, for every week he is so employed - - - - - - -	$2\frac{1}{2}d$.

S. 85 (2) Provided that in the case of a workman below the age of eighteen, 1*d.* shall be substituted for 2½*d.* as the contribution from the workman and from the employer, but, for the purpose of reckoning the number of contributions in respect of such a workman except as regards the payment of unemployment benefit before he reaches the age of eighteen, the 1*d.* shall be treated as two fifths of a contribution.

"**From every workman.**"—The workman is himself liable to pay the contribution. See ss. 85 (2), 101 (2). Sed cf. s. 84 (3), by which the liability of the workman is suspended unless revived by regulations of the Board of Trade.

"**2½d.**" As to variation in the rate of contributions by Special Order or otherwise, see ss. 93 (2), 102. In every case the contributions of employer and workmen must be equally varied, and they cannot in any case be increased beyond 4½*d.* See note to s. 102.

Every such period of employment of less than a week shall, for the purposes of this schedule, be treated as if it were employment for a whole week, except that, where the period of employment is two days or less, the contributions both of the employer and of the workman shall be reduced to one penny if the period does not exceed one day and to twopence if it exceeds one day; and, in such case, in reckoning the number of contributions under Part II of this Act and the schedules therein referred to, contributions at such reduced rates shall be treated as two-fifths or four-fifths of a contribution as the case may require.

"**Shall be reduced to one penny.**"—This contribution cannot be increased by the Board of Trade, though it may be reduced (see note to s. 102).

As to the special case of workmen taken for short periods through a Labour Exchange, and the recovery back of contributions above 2½*d.* per week, paid under this paragraph, see s. 99.

(3) Except where the regulations under this Part of this Act otherwise prescribe, the employer shall, in the first instance, be liable to pay both the contribution payable by himself, and also on behalf of and to the exclusion of the workman, the contribution payable by such workman, and subject to such regulations, shall be entitled, notwithstanding the provisions of any Act or any contract to the contrary, to

recover from the workman by deductions from the workman's wages or from any other payment due from him to the workman the amount of the contributions so paid by him on behalf of the workman. S. 85 (3)

"**Except where the regulations under this part of this act otherwise prescribe.**"—Board of Trade regulations shall protect employers and workmen from proceedings and penalties in cases where they have refrained from paying contributions in accordance with a decision of the umpire [s. 91 (1) (*b*)]. Such a decision need not apparently be given in any matter to which the employer in question was a party. Employers and workmen will be justified in taking the law from the umpire, though the umpire's interpretation of the Act may be erroneous.

"**The employer shall be liable to pay.**"—The meaning of "employer" is nowhere defined, except by implication in s. 107 (1). The employer is, therefore, the other party to the workman's contract, *i.e.*, the person to whom the workman looks for payment; see notes to the First Schedule, Part I (*a*), under s. 1 (2). Payment of contributions is enforced by the penalties set out in s. 101 (2); and in the bankruptcy of the employer, or liquidation of an employing company these contributions are entitled to priority under the Stannaries Act 1887, the Preferential Payments in Bankruptcy Act, 1888, and the Companies Consolidation Act, 1908 (see s. 110 hereof). As to employment under a sub-contractor, see s. 91 (1) (*f*).

"**Notwithstanding the provision of any Act.**"—See the Third Schedule (3). Payments for the purpose of providing unemployment benefit may not otherwise be deducted from wages under the Truck Act, 1831.

"**To the exclusion of the workman.**"—The liability imposed upon workmen by s. 85 (2), is therefore again suspended in the first instance by s. 85 (3), but power is given to the Board of Trade to reimpose the obligation, and so to make the workman liable under s. 101 to prosecution for non-payment of contributions.

By this procedure of imposing and then suspending a tax, the Statute avoids creating the undesirable precedent of giving to the Crown the power of itself imposing and varying the incidence of such a charge in the first instance.

It is to be observed, however, that the words of the section are that "the employer shall be liable . . . to pay . . . to the exclusion of the workman," not that "the employer shall be liable to the exclusion of the workman." The liability of the workman therefore always remains until the employer has in fact paid.

(4) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages of or other payment due to the workman, or otherwise recover from the workman by any legal

S. 85 (4) process the contributions payable by the employer himself.

This subsection does not prevent deductions by indirect means if the employer desires, and is strong enough to reduce wages. See note to Third Schedule (7).

(5) Subject to the Provisions of this Part of this Act, the Board of Trade may make regulations providing for any matters incidental to the payment and collection of contributions payable under this Part of this Act, and in particular for—

(*a*) payment of contributions by means of adhesive or other stamps affixed to or impressed upon books or cards, or otherwise, and for regulating the manner, times and conditions in, at and under which such stamps are to be affixed and impressed or payments are otherwise to be made;

(*b*) the issue, sale, custody, production, and delivery up of books or cards and the replacement of books or cards which have been lost, destroyed or defaced.

"**Make regulations**" in manner provided by s. 91 (3). The Ninth Schedule does not apply to such regulations.

"**Issue, sale, custody or delivery up of books or cards.**"—The cost of printing and issuing cards may clearly be borne by the Board of Trade under s. 89 (2), but the Act gives no power to the Board to make a charge for cards, and it would clearly be *ultra vires* of the Board to make regulations compelling the public to pay for cards. Presumably therefore the cards must be issued gratuitously.

For loss of the card a workman or employer can be fined 1s. [s. 100 (3)].

(6) A contribution shall be made in each year out of moneys provided by Parliament equal to one-third of the total contributions received from employers

and workmen during that year, and the sums to be contributed in any year shall be paid in such manner and at such times as the Treasury may determine. S. 85 (6)

86.—The statutory conditions for the receipt of unemployment benefit by any workman are— Statutory conditions for receipt of unemployment benefit.

(1) that he proves that he has been employed as a workman in an insured trade in each of not less than twenty-six separate calendar weeks in the preceding five years;

(2) that he has made application for unemployment benefit in the prescribed manner, and proves that since the date of the application he has been continuously unemployed;

(3) that he is capable of work but unable to obtain suitable employment;

(4) that he has not exhausted his right to unemployment benefit under this Part of this Act:

"**Has been employed.**"—The effect of this subsection is that the policy lapses four and a-half years after leaving the trade. However long a workman has been in regular employment in an insured trade, it would appear that he cannot for more than four and a-half years rely upon the unemployment fund.

"**The prescribed manner.**"—The Board of Trade are to "prescribe" and may prescribe application to the Post Office; the intention of the Act, however, appears to be that where there is a labour exchange available, application should be made through the labour exchange. See s. 91 (1) (*d*) and notes.

"**Continuously unemployed.**"—See this phrase defined in s. 107, *infra*. The effect of this definition is that a workman can draw unemployment benefit in respect of the second period of one week's unemployment occurring within six weeks of the last, and can draw benefit for every week after the first in which he does less than two days' work.

"**Capable of work.**"—If "rendered incapable of work by some specific disease or by bodily or mental disablement," the workman is entitled to sickness or disablement benefit under paragraphs (*c*) and (*d*) of section 8 (1). [See notes thereto, *supra*.]

S. 86 — The conditions of unemployment benefit and of sickness or disablement benefit are therefore mutually exclusive.

See also s. 87 (4) below.

"Suitable employment."—Save that section 100 makes it clear that the skill of the workman is to be "taken into consideration in determining what is suitable employment for the workman," the Statute makes no attempt to define the meaning of the words. The question is in fact left for the decision of the referees and umpire *primae impressionis*; but it is submitted that the paragraph must be read as a whole and that employment offered must be suitable, having regard to the applicant's capability for work.

"Exhausted his right."—The right to unemployment benefit is exhausted

(*a*) When the workman has drawn fifteen weeks' benefit in the course of twelve months.

(*b*) When the workman has drawn one week's benefit in respect of each 1s. 6*d*. contributed by him.

See notes to the Seventh Schedule, under s. 84 *supra*.

Provided that a workman shall not be deemed to have failed to fulfil the statutory conditions by reason only that he has declined—

(*a*) an offer of employment in a situation vacant in consequence of a stoppage of work due to a trade dispute; or

(*b*) an offer of employment in the district where he was last ordinarily employed at a rate of wage lower, or on conditions less favourable, than those which he habitually obtained in his usual employment in that district, or would have obtained had he continued to be so employed; or

(*c*) an offer of employment in any other district at a rate of wage lower or on conditions less favourable than those generally observed in such district by agreement between associations of employers and of workmen, or, failing any such agreement, than those generally recognised in such district by good employers.

The effect of this proviso is substantially to declare certain employments unsuitable. The applicant is in no way debarred from accepting an offer of any such employment, but on the other hand he cannot be penalised for refusing it. It is clearly the intention of the Statute that the fund derived equally from employers and employed shall not be used against the direct interests of either. At the same time it is clear that the effect of the Act in assisting Trade Unions to pay sick and unemployment benefits, which were heretofore payable out of their general funds, will be to set free a large part of those funds for use in connection with trade disputes.

"**Trade dispute.**"—As defined in s. 107 (1) hereof. By the Trade Disputes Act, 1906, "'trade dispute' means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of employment, or with the condition of labour of any person, and the expression 'workmen' means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises" [6 Edw. 7, c. 47, s. 5 (3)].

"**Conditions less favourable than those which be habitually obtained.**"—Some difficulty may be experienced in harmonising this proviso with s. 100 (1). Under the latter section the Insurance Officer and the Court of Referees may decide that work less skilled, and therefore probably under less favourable conditions than "those which he habitually obtained," is "suitable employment"; but notwithstanding that subsection this proviso clearly empowers the workman to refuse such employment and require the payment of his benefit.

The effect of the proviso is to maintain union rates so far as Trade Union members are concerned, and to empower other workmen to demand their customary rate.

"**Employment in any other district.**"—It must be clearly understood that employment at the standard rate in another district is not declared by this section to be suitable employment. The question raised by subsection (3) remains in every case one for the Insurance Officer to decide subject to appeal to the Court of Referees.

Disqualifications for unemployment benefit.

87.—(1) A workman who has lost employment by reason of a stoppage of work which was due to a trade dispute at the factory, workshop, or other premises at which he was employed, shall be disqualified for receiving unemployment benefit so long as the stoppage of work continues, except in a case where he has, during the stoppage of work, become bonâ fide employed elsewhere in an insured trade.

Where separate branches of work which are commonly carried on as separate businesses in separate premises are in any case carried on in

S. 87 (1) separate departments on the same premises, each of those departments shall, for the purposes of this provision, be deemed to be a separate factory or workshop or separate premises, as the case may be.

"**Trade dispute.**"—See note to section 86 (*a*) *supra*. This sub-section is complementary to proviso (*a*) in section 86. Thus the Unemployment Fund cannot be used either to assist workmen to strike or to enable employers to procure strike breakers.

"**Disqualified.**"—The effect of the Seventh Schedule, *q.v.*, is to prevent the payment of benefit for one week after the disqualification ceases.

"**At the factory.**"—The embargo upon benefits applies only to factories in which a strike or lock-out takes place.

Factories in which unemployment occurs as a consequence of a trade dispute elsewhere are not within the section, and workmen thrown out of employment in consequence are entitled to benefit.

"**Continues.**"—When work is resumed any workman who is not taken back will be entitled to benefit.

(2) A workman who loses employment through misconduct or who voluntarily leaves his employment without just cause shall be disqualified for receiving unemployment benefit for a period of six weeks from the date when he so lost employment.

"**Misconduct.**"—The ultimate authority to decide these questions is the Court of Referees [see note to s. 88 (1) (*a*), *infra*].

"**Six weeks.**"—In effect seven weeks. See Seventh Schedule, and notes thereto.

(3) A workman shall be disqualified for receiving unemployment benefit whilst he is an inmate of any prison or any workhouse or other institution supported wholly or partly out of public funds, and whilst he is resident temporarily or permanently outside the United Kingdom.

"**Disqualified.**"—See s. 86 (3), and note thereto.

"**Resident.**"—Cf. s. 8 (4) and notes.

(4) A workman shall be disqualified for receiving unemployment benefit while he is in receipt of any sickness or disablement benefit or allowance under Part I. of this Act.

S. 88 (1) — Determination of claims.

88.—(1) All claims for unemployment benefit under this Part of this Act, and all questions whether the statutory conditions are fulfilled in the case of any workman claiming such benefit, or whether those conditions continue to be fulfilled in the case of a workman in receipt of such benefit, or whether a workman is disqualified for receiving or continuing to receive such benefit, or otherwise arising in connection with such claims, shall be determined by one of the officers appointed under this Part of this Act for determining such claims for benefit (in this Act referred to as "insurance officers"):

Provided that—

(*a*) in any case where unemployment benefit is refused or is stopped, or where the amount of the benefit allowed is not in accordance with the claim, the workman may require the insurance officer to report the matter to a court of referees constituted in accordance with this Part of this Act, and the court of referees after considering the circumstances may make to the insurance officer such recommendations on the case as they may think proper, and the insurance officer shall, unless he disagrees, give effect to those recommendations. If the insurance officer disagrees with any such recommendation, he shall, if so requested by the court of referees, refer the recommendation, with his reasons for disagreement, to the umpire appointed under this Part of this Act, whose decision shall be final and conclusive;

S. 88 (1) (b) —

(b) the insurance officer in any case in which he considers it expedient to do so may, instead of himself determining the claim or question, refer it to a court of referees, who shall in such case determine the question, and the decision of the court of referees shall be final and conclusive.

"**Referees.**"—See s. 90.

"**Final and conclusive.**"—On the question whether the decision of the umpire is always conclusive of the question whether or no a workman is a workman in an insured trade, see s. 91 (1) (b), and notes thereto. Contributions from the employer can only be enforced by conviction by a court of summary jurisdiction under s. 101 (2), *q.v.*

Section 88 constitutes a court of referees as a court of appeal from the decision of an insurance officer, who is himself a person with judicial duties. Further appeal lies only at the instance of the insurance officer, and there is no appeal when the referees and insurance officer agree. The insurance officer cannot appeal from the decision of the court of referees when he has himself referred the matter to them. The Board of Trade are to regulate the procedure and appeal under s. 91 (1) (*b*), (*c*), (*d*).

The intention of the Act would appear to be that the umpire should be appealed to only on questions of law, and for the purpose of co-ordinating the decisions of various local courts.

(2) Nothing in this section shall be construed as preventing an insurance officer or umpire, or a court of referees, on new facts being brought to his or their knowledge, revising a decision or recommendation given in any particular case, but, where any such revision is made, the revised decision or recommendation shall have effect as if it had been an original decision or recommendation, and the foregoing provisions of this section shall apply accordingly, without prejudice to the retention of any benefit which may have been received under the decision or recommendation which has been revised.

(3) The Arbitration Act, 1889, shall not apply to proceedings under this section except so far as it

may be applied by regulations under this Part of this Act. S. 88 (4) (3) —

(4) For the purposes of proceedings under this section in Ireland regulations may apply all or any of the provisions of the Common Law Procedure (Ireland) Act, 1856, with respect to arbitration.

Subsection (3) is not repeated in ss. 91 and 101, to which it may, therefore, be presumed that the Arbitration Act will apply except in so far as it is inconsistent with the regulations made under those sections. See notes to ss. 63 (5) and 66.

Appointment of umpire, insurance officers, inspectors, &c.

89.—(1) For the purposes of this Part of this Act, an umpire may be appointed by His Majesty, and insurance officers shall be appointed by the Board of Trade (subject to the consent of the Treasury as to number) and the insurance officers shall be appointed to act for such areas as the Board direct.

(2) The Board of Trade may appoint such other officers, inspectors, and servants for the purposes of this Part of this Act as the Board may, with the sanction of the Treasury, determine, and there shall be paid out of moneys provided by Parliament to the umpire and insurance officers and to such other officers, inspectors, and servants, such salaries or remuneration as the Treasury may determine; and any expenses incurred by the Board of Trade in carrying this Part of this Act into effect to such amount as may be sanctioned by the Treasury shall be defrayed out of moneys provided by Parliament:

Provided that such sum as the Treasury may direct, not exceeding one-tenth of the receipts, other than advances by the Treasury, paid into the unemployment fund on income account shall, in accordance with regulations made by the Treasury, be applied as an appropriation in aid of money provided by

S. 89 (2) Parliament for the purpose of such salaries, remuneration, and expenses.

"In carrying this Part of this Act into effect."—The cost of printing cards and the like can be defrayed under this section; and since the Act does not require workmen to make any payment for their cards it is submitted that the cost must be so paid.

Payment of referees is to be borne by the Treasury under this head, s. 90 (5).

"One-tenth of those receipts."—The maximum appropriation of one-tenth amounts to ½d. in each weekly contribution, leaving 6d. available for benefit. Having regard to the fact that benefit is not payable for the first week of unemployment, the contribution will, therefore, suffice to provide for an average unemployment rate of 8·0 per cent.

This section is in fact a statutory undertaking by the Board of Trade to manage the scheme at a cost not exceeding ½d. per head per week.

Courts of referees.

90.—(1) A court of referees for the purposes of this Part of this Act shall consist of one or more members chosen to represent employers, with an equal number of members chosen to represent workmen, and a chairman appointed by the Board of Trade.

(2) Panels of persons chosen to represent employers and workmen respectively shall be constituted by the Board of Trade for such districts and such trades or groups of trades as the Board may think fit, and the members of a court of referees to be chosen to represent employers and workmen shall be selected from those panels in the prescribed manner.

(3) Subject as aforesaid, the constitution of courts of referees shall be determined by regulations made by the Board of Trade.

(4) The regulations of the Board of Trade may further provide for the reference to referees chosen from the panels constituted under this section, for consideration and advice, of questions bearing upon

the administration of this Part of this Act, and for the holding of meetings of referees for the purpose. S. 90 (5)

"**Consideration and advice.**"—Subsection (4) provides an elastic advisory committee to assist the Board of Trade, exercising similar function to the committee set up under s. 58, *q.v.*

(5) The Board of Trade may pay such remuneration to the chairman and other members of a court of referees and such travelling and other allowances (including compensation for loss of time) to persons required to attend before any such court, and such other expenses in connection with any referees, as the Board, with the sanction of the Treasury determine, and any such payments shall be treated as expenses incurred by the Board of Trade in carrying this Part of this Act into effect.

91.—(1) The Board of Trade may make regulations for any of the purposes for which regulations may be made under this Part of this Act and the Schedules therein referred to, and for prescribing anything which under this Part of this Act or any such Schedules is to be prescribed, and— Regulations.

(*a*) for permitting workmen who are employed under the same employer partly in an insured trade and partly not in an insured trade to be treated with the consent of the employer as if they were wholly employed in an insured trade; and

(*b*) for giving employers, and workmen, and the Board of Trade an opportunity of obtaining a decision by the umpire appointed under this Part of this Act on any question whether contributions under this Part of this Act are payable in respect of any workman or class of workmen,

S. 91 (1) (b)

and for securing that a workman in whose case contributions have been paid in accordance with any such decision, shall, as respects any unemployment benefit payable in respect of those contributions, be treated as a workman employed in an insured trade, and for securing that employers and workmen shall be protected from proceedings and penalties in cases where, in accordance with any such decision, they have been paid or refrained from paying contributions; and

"**Workman.**"—See s. 107 (1). The jurisdiction of the umpire exists only when the employee is a "workman," and whether he is so or no it is not within the province of the umpire to decide.

"**Decision by the umpire.**"—It is to be observed that the Statute provides no machinery for compelling an employer to obtain or abide by a decision of the umpire as to whether contributions are payable in respect of any workman or class of workmen. The employer can only be compelled to contribute in respect of any workman by proceedings under s. 101 (2), *q.v.*; and it will always be open to him to decline to seek a decision by the umpire until the question is referred to him by the court. See s. 101 (6), under which the court must refer the matter. On the other hand, should the employer decide to take the opinion of the umpire, he is apparently protected by the above subsection from proceedings under s. 101 (2) when the umpire decides in his favour. If, however, the decision of the umpire is adverse to the employer it may not be necessarily conclusive, notwithstanding s. 101 (6), and the provision for protecting the interests of employers and workmen acting in accordance with any decision of the umpire clearly recognises that the umpire may be held to be wrong in law. The decision of the umpire is no doubt conclusive against the employer so far as it relates to a question of fact. In a case arising under section 7, subsection (3) of the Education Act, 1902 (2 Edw. 7, c. 42), which provides that:—

"If any question arises under this section between the local education authority and the managers of a school not provided by the authority, the question shall be determined by the Board of Education."

Channel, J., in *Wilford* v. *West Riding* [(1908) 1 K.B. 685, at p. 700], interpreted the effect of that section as follows:—

"I think the words 'If any question arises under this section'

really mean 'any question of facts arising under this section,' and do not cover the enforcement of the obligations of the section. The enforcement of obedience to the law must, as it seems to me, always rest with the tribunals of the country, although it is not uncommon in modern legislation to depute to some person or body assumed to be skilled in the matter the sole power of deciding matters necessary to be decided in applying the law. In such cases the Courts always strictly confine the person so deputed to the limits of his jurisdiction."

S. 91 (1) (*b*) —

On the other hand, in the case of *Board of Education* v. *Rice* (1911), A.C. 179, Lord Loreburn said: "The Board have of course no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences that may arise, and as they arise, between the managers and the local educational authority. The Board is in the nature of an arbitral tribunal, and a court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact."

So far, therefore, as the decision of the umpire relates to a matter of law, it may be liable to review by the Courts before any penalty can be enforced against the employer in a criminal proceeding. The Board of Trade [see s. 101 (3)], when taking proceedings for a penalty, cannot allege that the matter is *res judicata*.

"The maxim of the civil law, 'res judicata pro veritate accipitur,' applied only when the identical question, which had been once judicially decided, was again raised between the same parties—the rule laid down in the Digest, lib. XLIV., t. 2, s. 3, being 'exceptionem rei judicatae obstare, quoties eadem questio inter easdem personas revocatur.' This plea, therefore, is exactly analogous to a plea in the English Courts of 'judgment recovered'; in which it is necessary, in order to make the judgment operate as an estoppel, that it should be between the same parties and upon the same subject matter coming directly in question, either in the same Court, or in another Court of co-ordinate jurisdiction" (per Lord Chelmsford in the *Leith Harbour Commissioners* v. *Inspector of the Poor*, L.R. 1 H.L., &c. 17, at p. 22).

It would appear, therefore, that the decision of the umpire may not be binding upon the Court in a proceeding such as a proceeding under s. 101 of the Statute, so far, at least, as the decision of the umpire relates to a question of law.

It is to be observed that subs. (3) of s. 88 is not repeated in this section. As to the application of the Arbitration Act, 1889, to the proceedings before the umpire under this paragraph, see s. 101 (6), and note thereon.

See also *Westminster* v. *Gordon Hotels*, 1907, 1 K.B. 910, and note to s. 66 (1) (i).

(*c*) for prescribing the evidence to be required as to the fulfilment of the conditions and qualifications for receiving or continuing to receive unemployment benefit, and for that purpose requiring the attendance

S. 91 (1) (c)

of workmen at such offices or places and at such times as may be required; and

The intention of this paragraph is clearly to require the attendance of workmen receiving unemployment benefit at Labour Exchanges at stated hours. Members of Trade Unions in insured trades who receive benefits from their unions under s. 105, may be required by the Board of Trade to attend at Labour Exchanges as a condition of the statutory refund to their unions; and insured workmen who draw benefit through the Post Office may likewise be required to attend at the Labour Exchange in order to satisfy the statutory condition that they are unable to obtain suitable employment [s. 86 (3)].

The Board of Trade cannot, under the powers conferred by this paragraph, require the attendance of a workman not in an insured trade, although he receives State aided unemployed pay under s. 106, *q.v.* since such payments are not "unemployment benefit" within the meaning of the Act, s. 84.

(*d*) for prescribing the manner in which claims for unemployment benefit may be made and the procedure to be followed on the consideration and examination of claims and questions to be considered and determined by the insurance officers, courts of referees, and umpire, and the mode in which any question may be raised as to the continuance, in the case of a workman in receipt of unemployment benefit, of such benefit, and for making provision with respect to the appointment of a deputy umpire in the case of the unavoidable absence or incapacity of the umpire; and

(*e*) with respect to the payment of contributions and benefits during any period intervening between any application for the decision of any question or any claim for benefit, and the final determination of the question or claim; and

"**During any period intervening.**"—Benefits so paid may be recovered back under s. 101 (5) if it should be found that the recipient

was not entitled thereto. There is, however, no provision requiring the Board of Trade to take steps to recover such overpayments, and regulations under this paragraph may presumably provide that such payments should not be recovered. Cf. s. 88 (2). S. 91 (1) (e)

(*f*) for providing that, where any workmen are employed in or for the purposes of the business of any person, but are not actually employed by that person, that person may be treated for the purposes of this Part of this Act as their employer instead of their actual employer, and for allowing that person to deduct from any payments made by him to the actual employer any sums paid by him as contributions on behalf of the workmen, and for allowing the actual employer to recover the like sums from the workmen ; and

"**For the purposes of the business.**"—Cf. the Third Schedule (6). Under this paragraph the chief employer of a chargeman's gang or the like may be made responsible for the contributions of each member. It is to be noted that this paragraph, unlike the corresponding paragraph of Part I, will apply to an outworker though not himself directly employed by the head of the business in which he works.

generally for carrying this Part of this Act into effect, and any regulations so made shall have effect as if enacted in this Act.

Any regulations made under this section for giving an opportunity of obtaining a decision of the umpire may be brought into operation as soon as may be after the passing of this Act.

(2) The regulations may, with the concurrence of the Postmaster-General, provide for enabling claimants of unemployment benefit to make their claims for unemployment benefit under this Act through

S. 91 (2) the Post Office, and for the payment of unemployment benefit through the Post Office.

(3) All regulations made under this section shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new regulation.

The provisions herein contained as to regulations are similar to the provisions already existing as to the Code of Regulations prepared by the Board of Education for elementary schools, 33 & 34 Vict. cap. 75, s. 97.

"Previously done."—See note to s. 83, *supra*.

Unemployment fund.

92.—(1) For the purposes of this Part of this Act there shall be established under the control and management of the Board of Trade a fund called the unemployment fund, into which shall be paid all contributions payable under this Part of this Act by employers and workmen and out of moneys provided by Parliament, and out of which shall be paid all claims for unemployment benefit and any other payments which under this Part of this Act are payable out of the fund.

(2) The accounts of the unemployment fund shall be audited in such manner as the Treasury may direct.

(3) Any moneys forming part of the unemployment fund may from time to time be paid over to the National Debt Commissioners and by them invested

in accordance with regulations made by the Treasury in any securities which are for the time being authorised by Parliament as investments for savings banks moneys. S. 92 (3)

(4) The National Debt Commissioners shall present to Parliament annually an account of the securities in which moneys forming part of the said fund are for the time being invested.

"**Unemployment fund.**"—The fund set up by this section is not comparable in amount with the National Health Fund, as all that is required is a sufficient reserve made up in years of good trade to tide through a period of depression with the help of Treasury advances under the succeeding section. There is no provision in the nature of reserve values for the increase of unemployment among the older members of the fund.

"**All claims.**"—Assuming that the maximum appropriation of one-tenth of the receipts [s. 89 (2)], *i.e.* $\frac{3}{4}$*d.* per week per man, is made for the cost of management, the sum available for benefit is 6*d.* per workman per week, of which $\frac{5}{12}$ths represents the employer's contribution, $\frac{5}{12}$ths the workman's, and $\frac{1}{6}$th the State's; the State also bearing the cost of administration.

Of the 7*s.* benefit, therefore, 2*s.* 11*d.* represents the workman's contribution, 2*s.* 11*d.* the employer's, and 1*s.* 2*d.* the State's, and these proportions cannot be affected by any revision of the rates of contribution.

Without allowing for the saving to the fund through a certain number of members exhausting their right to benefit, it is clear that the fund must be solvent so long as the average unemployment rate is less than 8·6 per cent.

93.—(1) The Treasury may out of the Consolidated Fund or the growing produce thereof advance on the security of the unemployment fund any sums required for the purpose of discharging the liabilities of that fund under this Part of this Act: Provided that the total amount of advances outstanding at any time shall not exceed three million pounds. Treasury advances.

(2) If, whilst any part of any such advance is outstanding, it appears to the Treasury that the unemployment fund is insolvent, the Board of Trade

S. 93 (2) shall, if the Treasury so direct, by order, make such temporary modifications in any of the rates of contribution, or the rates or periods of unemployment benefit, and during such period, as the Board of Trade think fit, and as will on the whole, in the opinion of the Treasury, be sufficient to secure the solvency of the unemployment fund:

Provided that no order made under this subsection shall reduce the weekly rate of unemployment benefit below the sum of five shillings, or shall increase the rates of contribution from employers or workmen by more than one penny per workman per week, or increase those rates unequally as between employers and workmen, and no such order shall remain in force more than three months after all the advances and interest thereon have been repaid, or come into force until one month after it is made.

"**Insolvent.**"—This subsection clearly refers, not to actuarial insolvency, which is provided for by s. 102, *q.v.*, but to temporary insolvency owing to a period of distress. It is clear that although the rates of contribution may be really adequate to meet the cost of benefits, there may yet be a deficit at the close of a year of bad trade. Such a deficit may arise even after a revision of rates under s. 102, and the two sections should be regarded as cumulative in their operation.

"**By order.**"—This is not a special order under s. 113, but must comply with the provisions of subs. (4) hereof. Cf. s. 78.

"**In any of.**"—The meaning of the section is clearly "in any of the rates of contribution or *in any of* the rates or periods of unemployment benefit."

Cf. the first paragraph of the Seventh Schedule "such other rates as may be prescribed . . . . for any particular trade."

(3) An order under this section shall not be made so as to be in force at any time while any previous order made under this section is in force.

"**Any previous order.**"—This does not refer to a special order under s. 102.

(4) On any such order being made the Board of Trade shall cause the order, together with a special report as to the reasons for making the order, to be laid before Parliament. S. 93

Cf. s. 113 and the Ninth Schedule, which apply to "special orders" only.

(5) The Treasury may, for the purpose of providing for the issue of sums out of the Consolidated Fund under this section, or for the repayment to that fund of all or any part of the sums so issued, or for paying off any security issued under this section, so far as that payment is not otherwise provided for, borrow money by means of the issue of Exchequer bonds or Treasury bills, and all sums so borrowed shall be paid into the Exchequer.

(6) The principal of and interest on any Exchequer bonds issued under this section shall be charged on and payable out of the Consolidated Fund of the United Kingdom, or the growing produce thereof.

(7) Notwithstanding anything in any other Act, money in the hands of the National Debt Commissioners for the reduction of the National Debt shall not be applied to purchasing, reducing, or paying off any Exchequer bonds or Treasury bills issued under this section.

Refund of part of contributions paid by employer in the case of workmen continuously employed.

94.—(1) The Board of Trade shall, on the application of any employer made within one month after the termination of any calendar year, or other prescribed period of twelve months, refund to such employer out of the unemployment fund a sum equal to one-third of the contributions (exclusive of any contributions refunded to him under any other provisions of this Part of this Act) paid by him on his

S. 94 (1) own behalf during that period in respect of any workman who has been continuously in his service through the period, and in respect of whom not less than forty-five contributions have been paid during the period.

"**Continuously in his service.**"—This section does not require that the workman should have been at work in every week of the year. It is sufficient that forty-five weeks' contributions have been paid. If, however, the workman has been out of work whether through sickness or slackness of trade a question will necessarily arise whether he has been in the service of the employer. There are a number of decisions on the words of the Workmen's Compensation Act, 1897,[1] "period during which he has been in the employment of the same employer."

In the case of *Jones* v. *Ocean Coal Co.*,[2] A. L. Smith, L.J., said, "I think there must be continuous employment during the twelve months to bring a workman within that provision; that is, a continuous relationship of master and servant."

Vaughan Williams, L.J., adds: "But must the employment be continuous during the whole twelve months (or lesser period) without any break in point of time? For myself I should say obviously not; it is impossible to find any employment as to which it would be literally true to say that there had been no break in point of time. The question is substantially whether the relation of master and servant existed during the whole of the period under consideration. . . . The real question is whether there has been any break in that relation. To answer that question we may put this test: Are the facts such that we can assume that the workman, if called upon to work, will do so, or that the employer, if asked to give employment, will allow the man to work? If there is a period of time during which that could not be truly assumed then the relation of master and servant will have come to an end."[3]

In that case the Court of Appeal held that a strike had broken the continuity of employment. So also in the case of *Appleby* v. *Horseley Co.*,[4] it was held that a period of eleven months' sickness followed by employment in a different capacity was a break in employment. A. L. Smith, L.J., said: "The relationship of master and servant cannot properly be said to have existed during that period."[5]

It may therefore be presumed that temporary unemployment due to sickness, slack trade or holidays is no interruption of continuous service within the meaning of this section. On the other hand, the service will clearly have been interrupted if the workman has accepted employment under another master for any period, however short.

(2) For the purpose of meeting any change in the period for which any refund of contributions is to be

[1] 60 and 61 Vict. c. 37. Sched. I (1) *b*.
[2] (1899) 2 Q.B. 124.
[3] *Ibid.*, pp. 127–130.
[4] (1899) 2 Q.B. 521.
[5] *Ibid.* at p. 524. See also *Giles* v. *Belford, Smith & Co.* (1903), 1 K.B. 843.

made under the foregoing provisions of this section, or for the purpose of making provision for any period which may elapse between the date on which contributions commence to be payable under this Part of this Act and the date on which the first period for the refund of contributions under the foregoing provisions of this section commences, the Board of Trade may, so far as necessary for the purpose, apply the provisions of this section to any period less than twelve months, subject to such proportionate reduction of the number of contributions required as they direct, and this section shall take effect as regards any such period of less than twelve months as so applied.

S. 94 (2)

Repayment of part of contributions by workmen in certain cases.

95.—(1) If it is shown to the satisfaction of the Board of Trade by any workman or his personal representatives that the workman has paid contributions in accordance with the provisions of this Part of this Act in respect of five hundred weeks or upwards, and that the workman has reached the age of sixty, or before his death had reached the age of sixty, the workman or his representatives shall be entitled to be repaid the amount, if any, by which the total amount of such contributions have exceeded the total amount received by him out of the unemployment fund under this Act, together with compound interest at the rate of two and a half per cent. per annum calculated in the prescribed manner.

(2) A repayment to a workman under this section shall not affect his liability to pay contributions under this Part of this Act, and, if after any such repayment he becomes entitled to unemployment benefit, he shall be treated as having paid in respect of the period for which the repayment has been made the

S. 95 (2) full number of contributions which is most nearly equal to five-eighths of the number of contributions actually paid during that period.

Having regard to the provision of this section, a workman who is entitled to withdraw a part of his contributions should consider very carefully whether it is advisable for him to do so, unless he has finally ceased to follow an insured trade. For every 20s. drawn by him at the age of sixty under subsection (1), he loses the right to unemployment benefit to the extent of £3 3s.

If, however, he has ceased to follow an insured trade for a period of five years, he will not be entitled to any further unemployment benefit until he has worked at the trade for a further period of twenty-six weeks [s. 86 (1)]. In that case, therefore, the motives for leaving the money in the fund at the interest of 2½ per cent. apply with less force.

Refund of contributions paid in respect of workmen working short time.

96.—(1) If any employer satisfies the Board of Trade that during any period of depression in his business workmen employed by him have been systematically working short time, and that during such period he has paid contributions under this Part of this Act on behalf of such workmen, as well as on his own behalf, without recovering such contributions from such workmen either by way of deductions from wages or otherwise, there shall be refunded to him out of the unemployment fund, in accordance with regulations made by the Board of Trade, the contributions so paid by him in respect of those workmen (including those paid on behalf of the workmen as well as those paid on his own behalf), for the period or such part thereof as in the circumstances may seem just:

Provided that, except in a case where the working of short time has been effected by stopping the work for some day in the week which has been usually recognised as a working day of at least four hours in the trade and district, no such refund shall be made in respect of any workmen for any week in which the

hours of work have exceeded five-sixths of the number usually recognised as constituting a full week's work at that time in the trade and district. S. 96 (1)

(2) Any employer who desires to take advantage of this section may make an application to the Board of Trade with a view to obtaining their ruling as to the circumstances under which, and the means by which, he proposes to effect a reduction of working hours, and the Board of Trade may, if they think fit, on the necessary information being supplied, give their ruling as to whether the circumstances are such, and the proposed means of reducing working hours are such, as to satisfy the requirements of this section.

The Board of Trade is the sole authority on the subject of this section, and will presumably decide questions on grounds of expediency rather than of law, it being the obvious intention of the section that the Board should collaborate with employers to mitigate the effects of trade depression. It is therefore possible for the Board to bind itself in advance by promising a remission of contributions in particular cases.

"**Workmen.**"—It is apparently unnecessary that all the workmen in the factory should be on short time, provided that the two conditions are satisfied that there is depression in the business and that the short time has been "systematic," *i.e.* based on a scheme for coping with the existing depression.

Saving for occasional employment in rural neighbourhoods.

97.—Where a workman is employed in a district which is rural in its character, and the workman usually follows in that district some occupation other than an insured trade, and is employed in an insured trade occasionally only, contributions under this Part of this Act shall not be payable in respect of the workman, except in cases where the employer and the workman agree that contributions shall be payable notwithstanding this provision.

S. 98

Payment of contributions in case of Reservists or Territorials during training.

98.—Where a man of the Naval Reserves, the Army Reserve, or the Territorial Force, is being trained and is in receipt of pay out of the moneys provided by Parliament for Navy or Army services, and immediately before the training was employed in an insured trade, he shall, for the purposes of this Part of this Act, be deemed, whilst so training, to be in the employment of the Crown in an insured trade.

The Army Reserve including the Special Reserve [7 Edw. 7, c. 9, s. 30 (1)].

The Territorial Force including the Officers Training Corps.

"**Is being trained.**"—The section applies to the preliminary and annual training of the Territorial Force, but not to embodiment under s. 17 of the Territorial and Reserve Forces Act, 1907.

Provisions with respect to workmen engaged through Labour Exchanges.

99.—(1) The Board of Trade may, in such cases and on such conditions as the Board may prescribe, make an arrangement with any employer liable to pay contributions under any Part of this Act, whereby, in respect of workmen engaged by him through a labour exchange, or in his employ at the date of such arrangement, the performance of all or any of the duties required under any Part of this Act to be performed by the employer in respect of those workmen, whether on his own behalf or on behalf of the workmen, shall be undertaken on behalf of the employer by the labour exchange, and whereby in respect of such workmen different periods of employment, whether of the same workmen or different workmen, may for the purposes of the employer's contributions under this Part of this Act, but not for the purposes of a refund of any part of the employer's contributions, be treated as a continuous employment of a single workman.

"**All or any of the duties.**"—These duties include the purchase and affixing of stamps, but do not include the deduction of the workman's contribution from wages. It is no part of the employer's duty to make such deduction. Under section 85 (3), however, the employer may deduct "the amount of the contributions paid by him on behalf of the workman," and contributions paid by the Labour Exchange on behalf of the employer are presumably contributions paid by the employer under s. 85 (3). But s. 85 (3) is clearly limited to the deduction of contributions actually paid. (See note to subs. 2 hereof.) S. 99 (1) —

"**On behalf of the employer.**"—Qui facit per alium facit per se. Contributions paid by a Labour Exchange on behalf of an employer are for all purposes (except that of claiming a return of contributions) the contributions of the employer.

Cf. ss. 94 (1), 96 (1) and 107 (1).

(2) Where any such arrangement has been made, all the periods of employment during which a workman engaged through a labour exchange is employed by one or more employers with whom such an arrangement has been made, may, subject to regulations made by the Board of Trade, on the application of the workman, be treated for the purposes of his contributions under this Part of this Act as a continuous period of employment under one employer, and those regulations may provide for the refund of part of his contributions under this Part of this Act accordingly.

"**The refund.**"—So far as contributions under Part I of the Act are concerned there will be no overpayments and therefore no occasion to refund. But under Part II overpayment must arise.

It is clearly the duty of the Labour Exchange under sub-section (1) hereof to pay on the employer's behalf the contribution which the employer is liable under s. 85 (2) and the Eighth Schedule to pay, that is to say a contribution of 2*d.*, 4*d.*, or 5*d.*, according to the period of employment. Notwithstanding that a sum exceeding 5*d.* has already been paid during the week in respect of that workman, a further payment must be made upon his transfer to a new employer, since "every employer of any such workman" is liable to contribute under s. 85 (2).

The Labour Exchange must therefore refund to any workman who takes advantage of this subsection the amount overpaid, and must recover the sum so refunded out of the unemployment fund in such manner as may be provided.

100.—(1) If the repeated failure of any insured workman to obtain or retain employment appears to Subsidiary provisions.

S. 100 (1) the insurance officer to be wholly or partly due to defects in skill or knowledge, the insurance officer may, if he thinks fit, for the purpose of testing the skill or knowledge of the workman, offer to arrange for the attendance of the workman at a suitable place for the purpose, and may, out of the unemployment fund, pay all or any of the expenses incidental to such attendance.

If the workman fails or refuses either to avail himself of the offer, or to produce satisfactory evidence of his competence, or if as a result of the test the insurance officer considers that the skill or knowledge of the workman is defective, and that there is no reasonable prospect of such defects being remedied, such facts shall be taken into consideration in determining what is suitable employment for the workman.

If in any case as a result of the test the insurance officer considers that the skill or knowledge of the workman is defective, but that there is a reasonable prospect of the defects being remedied by technical instruction, the insurance officer may, subject to any directions given by the Board of Trade, pay out of the unemployment fund all or any of the expenses incidental to the provision of the instruction, if he is of opinion that the charge on the unemployment fund in respect of the workman is likely to be decreased by the provision of the instruction.

"**What is suitable employment.**"—The results of the test may lead the Insurance Officer and the Court of Referees to decide that less skilled work than the workman has done in the past is "suitable employment" for him under s. 86 (3), (*e.g.*, that labourer's work is suitable employment for a bricklayer), but if the wages offered or conditions of employment in the work so deemed suitable are on the whole less favourable than in the recent employment, the workman is still entitled to refuse such employment under proviso

(*b*) to s. 86, unless the Court should decide that the conditions which he "would have obtained had he continued to be so employed" (*i.e.* in his usual employment in that district) are the conditions of the less skilled trade

S. 100 (1)

It is submitted that apart from express provision in the Act the Court cannot so hold, and that s. 100 (1) is therefore nugatory, unless the umpire should enable the Court so to hold by a decision which would be, superficially at least, in contradiction of the words of the Statute, though probably in accord with its intention.

"**The charge on the unemployment fund.**"—This is a question purely for the discretion of the Insurance Officers.

(2) The Regulations of the Board of Trade made under this Part of this Act shall provide for the return to a workman who is not a workman in an insured trade and to his employer of any contributions paid by them respectively under the belief that the workman was a workman in an insured trade, subject, in the case of the workman's contributions, to the deduction of any amount received by him in respect of unemployment benefit under a similar belief.

Cf. ss. 91 (1) (*e*), 101 (5).

(3) Where under regulations made by the Board of Trade any sum has been paid out of the unemployment fund by way of reward for the return of a book or card which has been lost, the person responsible for the custody of the book or card at the time of its loss shall be liable to repay the sum so paid, not exceeding one shilling in respect of any one occasion.

Offences and proceedings for recovery of contributions, &c.

101.—(1) If for the purpose of obtaining any benefit or payment under this Part of this Act, either for himself or for any other person, or for the purpose of avoiding any payment to be made by himself under this Part of this Act, or enabling any other person to avoid any such payment, any person

S. 101 (1) knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding three months, with or without hard labour.

"**Imprisonment.**"—A court of summary jurisdiction may impose a fine not exceeding £25 instead of imprisonment, if the court thinks the justice of the case will be better met by a fine (Summary Jurisdiction Act, 42 & 43 Vict. c. 42, s. 4). In a case where imprisonment without the option of a fine is imposed, the defendant has a right of appeal to quarter sessions (*ibid.* s. 19). Cf. s. 69 (1).

(2) If any employer or workman has failed to pay any contributions which he is liable under this Part of this Act to pay, or if any employer or workman or any other person refuses or neglects to comply with any of the requirements of this Part of this Act, or the regulations made thereunder, he shall for each offence be liable on summary conviction to a fine not exceeding ten pounds, and also, where the offence is failure or neglect to make any contribution under this Part of this Act, to pay to the unemployment fund a sum equal to three times the amount which he has refused or neglected to pay (not exceeding five pounds), which sum, when paid, shall be treated as a payment in satisfaction of the contributions which he has so refused or neglected to pay.

"**Employer.**"—See s. 85 (3), s. 91 (1) (*b*).

"**Or workman.**"—Though the employer is "in the first instance liable to pay both" contributions [s. 85 (3)], the workman is also ultimately liable [s. 85 (2)]. A workman who goes to a new employer for the first time in any week, and knowingly receives payment in full without calling his employer's attention to his unpaid contribution, is clearly liable to prosecution under this section if the employer has not in fact paid. Cf. s. 69 (2) where the words "or workman" do not occur.

(3) Proceedings under the foregoing provisions of this section shall not be instituted except by, or with the consent of, the Board of Trade, and may be

commenced at any time within three months of the date at which the offence comes to the knowledge of the Board of Trade. S. 101 (3)

(4) Nothing in this section shall be construed as preventing the Board of Trade from recovering any sums due to the unemployment fund by means of civil proceedings, and all such sums shall be recoverable in such proceedings as debts due to the Crown.

(5) If it is found at any time that a person has been in receipt of unemployment benefit under this Part of this Act whilst the statutory conditions were not fulfilled in his case, or whilst he was disqualified for receiving unemployment benefit, he shall be liable to repay to the unemployment fund any sums paid to him in respect of unemployment benefit whilst the statutory conditions were not fulfilled, or whilst he was disqualified for receiving the benefit, and the amount of such sums may be recovered as a debt due to the Crown.

Cf. ss. 71, 91 (1) (*e*), 100 (2).

(6) In any proceedings under this section, or in any proceedings involving any question as to the payment of contributions under this Part of this Act, or for the recovery of any sums due to the unemployment fund, the decision of the umpire appointed under this Part of this Act on any question arising, whether the trade in which the workman is or has been employed is an insured trade or not, shall be conclusive for the purpose of those proceedings, and, if no such decision has been obtained and the decision of the question is necessary for the determination of the proceedings, the question shall be referred, in accordance with the regulations made under this Part

S. 101 (6) of this Act, to the umpire for the purpose of obtaining such a decision.

"**Conclusive.**"—Quære whether this section refers to a decision of fact only. Cf. *Wilford* v. *West Riding C.C.* (1908), 1 K.B., 685 and *Board of Edn.* v. *Rice*, 1911 A.C. 179, at p. 182, as to how far the Court can delegate the duty of determining a question of law. It must be borne in mind that the passage referred to in the latter case is *obiter dictum*, and that the former case was not cited in the House of Lords. See also s. 91 (1) and note thereto.

Quære also whether the Arbitration Act, 1889, applies to such a reference. By s. 24 of that Act it "shall apply to every arbitration under any Act passed before or after the commencement of this Act, as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorised or recognised by that Act." What then is an arbitration? Vice-Chancellor Malins has said that "if there be a difference between the parties, then a reference to settle those differences is an arbitration" (in *Thomson* v. *Anderson*, L.R., 9 Eq. 523, at p. 531).

Clearly the procedure under this section is not unlike a compulsory reference to arbitration under the Common Law Procedure Act, 1854, s. 3.

Now by s. 19 of the Arbitration Act, 1889, "any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court, any question of law arising in the course of the reference."

Under s. 88 (3), it is expressly provided that the Arbitration Act, 1889, shall not apply to proceedings under that section before the umpire or the Court of Referees. There is no such provision in s. 91 (1) (*b*) or in this section, and it would appear therefore that the Act applies except in so far as it may be barred by the regulations to be made under this Part of this Act (*Tabernacle Permanent Building Society* v. *Knight*, 1892, A.C. 298); and the umpire can accordingly be required to state a case on any question of law. Sed cf. *Westminster* v. *Gordon Hotels*, 1907, 1 K.B. 910. (See also the cases of *Munday* v. *Norton*, 1892, 1 Q.B. 403, *Potter* v. *West of England Iron Co.*, 1894, 2 Q.B. 159, and *Collins* v. *Collins*, 26 Beavan 306; and see R.S.C., Order 36; Jud. Act, 1884, s. 8; Arbitration Act, 1894, s. 14.) Cf. ss. 63 (5) and 69 (2).

Periodical revision of rates of contribution.

102.—If at any time after the expiration of seven years from the commencement of this Act it appears to the Board of Trade that the unemployment fund is insufficient or more than sufficient to discharge the liabilities imposed upon the fund under this Part of this Act, or that the rates of contribution are excessive or deficient as respects any particular

insured trade, or any particular branch of any such trade, the Board may, with the sanction of the Treasury, by special order made in manner hereinafter provided revise the rates of contribution of employers and workmen under this Part of this Act, and any such order may, if the Board think fit, prescribe different rates of contribution for different insured trades or branches thereof, and where any such order is made, the rates prescribed by the order shall as from such date as may be specified in the order be substituted as respects trades or branches thereof to which it relates for the rates prescribed by this Act : S. 102

Provided that where such a revision has been made no further revision under this section shall be made before the expiration of seven years from the last revision, and that no order under this section shall increase the rates of contribution from employers or workmen by more than one penny per workman per week above the rates specified in the Eighth Schedule to this Act, or shall vary such rates unequally as between employers and workmen.

"**Seven years.**"—Contributions cannot be varied under this section within seven years ; they can, however, be temporarily increased at any time at the instance of the Treasury under s. 93 (2), provided that the fund is insolvent at the time, and that there is a loan from the Treasury outstanding. The provision of this section is, however, intended to meet not temporary distress but actuarial insolvency, and is obviously required in view of the inadequate statistics as to unemployment available at the time of framing of the Act. If contributions and benefits do not balance, the Board of Trade may at any time vary the rate and conditions of benefit within the limits defined in the Seventh Schedule (see s. 84) ; but contributions cannot be reduced at all, or permanently increased, except under this section.

"**Special order.**"—See s. 113 and the Ninth Schedule.

"**The rates prescribed shall be substituted.**"—The variation in rates is a permanent one, unlike the variation under s. 93 (2).

"**By more than one penny per week.**"—The Board of Trade

S. 102

may increase the contributions permanently to 7*d.* a week for master and man. They cannot, however, make any further increase for another seven years. If the maximum increase possible under this section is inadequate to provide the benefits, recourse must be had to the powers of the Treasury under s. 93 (2), to reduce the benefits to 5*s.* per week.

It is submitted that where the Board of Trade has increased the contributions to 7*d.* per week, the Treasury on making a loan can require a further increase up to 9*d.*, the limit imposed by s. 93 being that "no order . . . shall increase the rates of contribution from employers or workmen by more than one penny per workman per week." The words appearing in s. 102, "above the rates specified in the Eighth Schedule to this Act," do not appear in s. 93. If, therefore, at the time of making any such temporary order, the rates had already been increased to 7*d.* for the joint contribution, it appears that a further temporary increase to 9*d.* is permissible. Under these circumstances the Treasury contribution becomes 3*d.*, and the total sum available 1*s.* per week. Since benefit can be drawn only for one week in respect of five weeks' contributions, it follows that there is power under the Act to secure that 5*s.* shall have been paid in in respect of each workman before he can draw a benefit whose statutory minimum is also 5*s.* Since the maximum Treasury loan of £3,000,000 will always be sufficient to cover administrative expenses through a long period of depression, it is inconceivable that the fund should ever be unequal to the payment of the minimum benefits.

The joint contributions of 2*d.* a day, payable under the Eighth Schedule in respect of short periods of employment cannot be increased under either s. 93 or s. 102, without infringing the statutory limit.

On the other hand, if the fund shows a large balance, contributions may be reduced under this section to any extent, or benefit may be increased by regulation under s. 91 (1) to 8*s.* a week, and by special order under s. 113, to an unlimited amount.

Power to extend to other trades.

103.—If it appears to the Board that it is desirable to extend the provisions of this Part of this Act to workmen in any trade other than an insured trade, or to vary the definition of "workman" with respect to the age of the persons included therein, either generally or for any particular insured trade, or any particular branch of any such trade, the Board may, with the consent of the Treasury, make, in manner hereinafter provided, a special order extending this Part of this Act to such workmen or so varying the definition of "workman," as the case may be, either without modification or subject to such modifications

of rates of contribution or rates or periods of benefit as may be contained in the order, and, on any such order being made, this Part of this Act shall, subject to the modifications (if any) contained in the order, apply as if the trade mentioned in the order were an insured trade, or as if the definition of "workman" were varied in accordance with the order, as the case may be, and as if the rates of contribution and the rates and periods of benefit mentioned in the order were the rates of contribution and the rates and periods of benefit provided by this Part of this Act in respect of such trade.

"**Desirable to extend.**"—It was clearly the intention of Parliament that unemployment insurance should ultimately be extended to all trades. See the speech of the Chancellor of the Exchequer in the House of Commons, May 4th, 1911.

"**Modification of rates.**"—There is no limit to the rate of benefits which may be paid in a trade brought into insurance by such an order, except the proviso below as to the contributions from employers, workmen, and Parliament, *q.v.*

"**As if the trade . . .were an insured trade.**"—This provision gives to the Treasury and to the Board of Trade the same power of varying the contributions as are given with respect to insured trades.

"**Subject to the modifications (if any) contained in the Order.**"—There is no limit set to the modifications which may be made in this part of the Act by such an order. It is, however, submitted that since there are no express words in the Statute repealing the Bill of Rights (1 W. & M. see s. 2, c. 2), the Crown cannot hereunder increase the total burden of taxation, and therefore the Board of Trade cannot by any such order increase the Parliamentary contribution beyond one quarter of the whole cost [s. 85 (6)], nor extend the powers of varying the compulsory contributions of employers and workmen contained in ss. 93 (2) and 102. Quære if the Board can reduce the Parliamentary contribution for the purpose of keeping the whole grant within the limits set by the proviso hereto.

Provided that no such order shall be made if the person holding the inquiry in relation to the order reports that the order should not be made, or if the order would, in the opinion of the Treasury, increase the contribution to the unemployment fund out of

S. 103

moneys provided by Parliament to a sum exceeding one million pounds a year before the expiration of three years from the making of the order, and that the rates of contribution mentioned in the order shall not exceed the rates specified in the Eighth Schedule to this Act, and shall be imposed equally as between employers and workmen.

Exclusion of subsidiary occupations.

104.—The Board of Trade may, if in any case they consider that it is desirable, by special order exclude from the occupations which are to be deemed employment in an insured trade for the purpose of this Part of the Act—

(*a*) Any occupation which appears to them to be common to insured and uninsured trades alike, and ancillary only to the purposes of an insured trade; and

"**Ancillary only.**"—Under the Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37, s. 4) an exception is made of "any work which is merely ancillary or incidental to, and is no part of or process in, the trade or business carried on by such undertakers." In *Pearce* v. *L. & S. W. Ry.* (1900) 2 Q.B. 100, at p. 102, Collins, L.J., said: "I think it would be difficult to give a better illustration of what constitutes merely ancillary or incidental work as distinguished from the actual business carried on by the undertakers than that which is afforded by the present case. . . . The building of a station was not in my opinion a part of, or process in, the business which the company carried on."

(*b*) Any occupation which appears to them to be an occupation in a business which, though concerned with the making of parts or the preparation of materials for use in connection with an insured trade, is mainly carried on as a separate business or in connection with trades other than insured trades;

and, on any such order being made, the occupation to which the order relates shall not be treated as

employment in an insured trade for the purposes of this Part of this Act.

S. 104 (b)

Any special order made under this section may be made so as to cover one or more occupations. The provisions of this Part of this Act as to the laying of regulations before Parliament and the presentation of an Address thereon shall apply to special orders made under this section.

"**A separate business.**"—Precisely what is a separate business it is apparently left to the Board of Trade to decide. The Courts have, however, frequently construed the words "business carried on separately" in the Married Women's Property Act, 1882, s. 2. It has been held that although the husband may help (*Re Edwards*, 11 T.L.R. 338) "carried on separately" means "without the husband's interference" (*Ashworth* v. *Outram*, 46 L.J. Ch. 687).

It is submitted that a business separately managed is a separate business for the purpose of this paragraph.

Arrangements with associations of workmen in insured trade who make payments to members whilst unemployed.

105.—(1) The Board of Trade may, on the application of any association of workmen the rules of which provide for payments to its members, being workmen in an insured trade, or any class thereof, whilst unemployed, make an arrangement with such association that, in lieu of paying unemployment benefit under this Part of this Act to workmen who prove that they are members of the association there shall be repaid periodically to the association out of the unemployment fund such sum as appears to be, as nearly as may be, equivalent to the aggregate amount which such workmen would have received during that period by way of unemployment benefit under this Part of this Act if no such arrangement had been made, but in no case exceeding three-fourths of the amount of the payments made during that period by the association to such workmen as aforesaid whilst unemployed.

"**Out of the unemployment fund.**"—See s. 92 and note thereto. It is to be observed that the Board of Trade contribution to

S. 105 (1) trade unions under s. 105 is paid out of a different fund and is quite independent of any contribution made by the Board under s. 106, *q.v.*

"**Which such workmen would have received.**"—In order that a trade union paying unemployed benefits should be able to claim and refund under this section in respect of any member it must be able to show that he would have received benefit but for an arrangement made under this section, *i.e.*, that he satisfied the conditions laid down in s. 86 and regulations made under s. 91 (1) (*a*) and (*c*), and was not disqualified under s. 87. The trade union must therefore take steps to secure that an insured member shall comply with all regulations as to claims, attendance at the Labour Exchange and the like, which may be made, and should if necessary amend its rules as to unemployment benefit for the purpose.

"**In no case exceeding three-fourths.**"—In order to draw the full benefit of 7*s.* out of the unemployment fund, a trade union must pay at least 9*s.* 4*d.* weekly as unemployed benefit to a person in an insured trade, or else must continue a payment of 7*s.* after the workman has exhausted his right to benefit (see the note below). The second course does not, however, assist the union if the workman has not exhausted his right to benefit at the close of the period in respect of which the Board of Trade payment is made. It will depend on the conditions prescribed by the Board of Trade whether a trade union paying this minimum benefit is entitled to draw one-sixth of the quarter paid out of its funds as a Parliamentary contribution under section 106.

"**During that period.**"—These words occur twice in the paragraph, and in each case clearly refer back to the sentence "there shall be repaid periodically." It would appear, therefore, that a trade union settling accounts quarterly with the Board of Trade can claim in respect of an insured workman who has fulfilled the statutory conditions three-fourths of the payments made to him during the whole quarter (not being more than the benefits to which he is entitled under Schedule the Seventh, and the claim is not limited to three-fourths of the payments made during the period in which the workman's right to benefit continued. Thus if a trade union member falls out of employment a week before the commencement of the quarter, having twenty contributions to his credit, so that he is entitled to draw benefit under the Act for four weeks starting from the quarter day, a trade union which pays him 7*s.* a week for twelve weeks, starting from the first week of unemployment will be entitled to recover 28*s.* from the unemployment fund at the end of the quarter. If, however, the workman had one hundred contributions to his credit so that he might have drawn the whole 84*s.* from the unemployment fund, the trade union will be entitled to draw 63*s.* only in respect of him; and to get the whole 84*s.* must pay him benefits at a rate of not less than 9*s.* 4*d.* per week.

(2) The council or other governing body of any association of workmen which has made such an arrangement as aforesaid shall be entitled to treat

the contributions due from any of its members to the unemployment fund under this Part of this Act, or any part thereof, as if such contributions formed part of the subscriptions payable by those members to the association, and, notwithstanding anything in the rules of the association to the contrary, may reduce the rates of subscription of those members accordingly. S. 105 (2)

"**May reduce the rates of subscription.**"—In estimating the gain to trade union funds under s. 105, it must be remembered that five-twelfths of the unemployment fund represents workmen's contributions, which trade unions may remit under this subsection; assuming therefore that no increased burden is laid upon the workman, the net gain to trade unions is 4*s.* 1*d.* in each 7*s.* of benefit, together with such further advantage as may be obtained under s. 106, *q.v.*

(3) For the purpose of determining whether a workman has exhausted his right to unemployment benefit under this Part of this Act, the amount of any sum which, but for this section, would have been paid to him by way of unemployment benefit shall be deemed to have been so paid.

(4) The Board of Trade may make regulations for giving effect to this section, and for referring to the umpire appointed under this Part of this Act any question which may arise under this section.

(5) The fact that persons other than workmen can be members of an association shall not prevent the association being treated as an association of workmen for the purposes of this section, if the association is substantially an association of workmen.

Repayments to associations who make payments to persons whether

106.—(1) The Board of Trade may, with the consent of the Treasury, and on such conditions and either annually or at such other intervals as the Board may prescribe, repay out of moneys provided by Parliament to any association of persons not

S. 106 (1) — workmen in insured trade or not, whilst unemployed.

trading for profit the rules of which provide for payments to persons whilst unemployed, whether workmen in an insured trade or not, such part (in no case exceeding one-sixth) as they think fit, of the aggregate amount which the association has expended on such payments during the preceding year or other prescribed period, exclusive of the sum (if any) repaid to the association in respect of such period in pursuance of an arrangement under the last foregoing section, and exclusive in the case of payments which exceed twelve shillings a week of so much of those payments as exceeds that sum.

"**On such conditions.**"—It is clearly necessary, in order to make the section consistent with s. 87, that one of the conditions should be that the grant shall not be paid in respect of strike pay.

"**Out of moneys provided by Parliament.**"—The unemployment fund is not in any way involved in the financing of this section, which must be regarded as a provision entirely distinct from the rest of the Statute.

"**Exclusive of any sum repaid.**"—This applies only to the sums actually repaid, and not to the expenditure in respect of which such sum was repaid under s. 105 (1), *q.v.* It is necessary under that section that a Trade Union should pay 9*s.* 4*d.* of benefit in order to receive 7*s.* from the unemployment fund. It can then, if the Board of Trade so arranges, recover also 4⅔*d.* out of general taxation under this section. The maximum sum recoverable in respect of one week's payment to any trade union member is 7*s.* 10*d.*, which can be repaid to a Trade Union paying 12*s.* benefit to a workman in an insured trade; 5*s.* 9*d.* of this sum will represent clear gain to the Union if it remits a subscription equal to the workman's contribution under this Part of this Act.

(2) No repayment shall be made under this section in respect of any period before the expiration of six months from the commencement of this Act.

Cf. s. 8 (8) and s. 84.

(3) The Board of Trade may make regulations for giving effect to this section, and for determining the mode in which questions arising under this section shall be settled.

The regulations must comply with s. 91 (3).

107.—(1) For the purposes of this Part of this Act— S. 107 (1)

The expression "workman" means any person of the age of sixteen or upwards employed wholly or mainly by way of manual labour, who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, is oral or in writing, and in relation to a person whilst unemployed means a person who, when employed, fulfilled the conditions aforesaid, but does not include an indentured apprentice;

The words of this paragraph are taken from s. 13 of the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), with the modifications that

(1) Casual labour is not excluded.
(2) The definition is limited to those employed wholly or mainly by way of manual labour.
(3) The phrase "contract of service or apprenticeship" is altered by omitting the words "or apprenticeship."

Cf. the First Schedule, Part I (*a*), and notes under s. 1 (2).

"**Workman**" includes women who satisfy the definition. [Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 1 (2).]

The umpire has no jurisdiction to interpret these definitions or to decide who is a "workman." The jurisdiction of the umpire under s. 91 (1) (*b*) begins only when it is decided that the employee in question is a workman within the meaning of the Act.

"**Wholly or mainly by way of manual labour.**"—The Employers and Workmen Act, 38 & 39 Vict. c. 90, s. 10, includes in the definition of "workman" a person "otherwise engaged in manual labour."

The Employers' Liability Act (Vict. 43 & 44, c. 42, s. 8), 1880, refers to persons "ordinarily engaged in manual labour"; and the Workmen's Compensation Act, 1906, excepts certain persons "employed otherwise than by way of manual labour."

As to the decisions on these various words see note to Schedule I, Part II (*g*), under s. 1 (2), *supra*.

Manual work is not necessarily manual labour, *Cook* v. *N. Met. Tramways Co.* 18 Q.B.D. 683.

"**An indentured apprentice.**"—Notwithstanding the specific exception of an indentured apprentice the definition does not appear to include any apprentice whether indentured or no, since an apprentice is not under a contract of service; and since the effect of the

S. 107 (1) section is intended to impose a charge upon the employer it must be construed strictly. Kennedy, J., in the case of *Horan* v. *Hayhoe* (1904), 1 K.B., 288, in construing the words "male servant" under the Revenue Act (32 & 33 Vict. c. 14), says :—

"It may be that an apprentice does to some extent do the class of work which would be done by a servant, but he does not do it as a servant. His relation to his employer is one of apprenticeship and not of service, and carries with it certain special incidents, and in particular that of being entitled to instruction. In the absence of a clear indication in the Act that it includes not merely a male person who is employed as a servant in one of the capacities enumerated, but also a person who is employed as an apprentice as distinguished from a servant, I think it does not cover the present case."

An apprentice is a person entirely distinct from a servant, and even though the contract of apprenticeship be defective it is not a contract of service (*R.* v. *King's Lynn*, 6 B. & C. 97). "An apprentice is a person who by contract is to be taught a trade" (per Grove, J., in *R.* v. *Laindon*, 8 T.R. 379.)

"No technical words are necessary to constitute the relation of master and apprentice" (per Lord Kenyon in *R.* v. *Ramlinson*, 1 East 531). "Where teaching on the part of the master, or learning on the part of the pauper is not the primary but only the secondary object of the parties, that will not prevent the contract being considered one of hiring and service. . . . But where teaching and learning are the principal object of the parties, though there was a service, the contract is considered to be one of apprenticeship" (per Taunton, J., in *R.* v. *Crediton*, 2 B. & A. 497). An apprentice has, however, been held to be a "servant or clerk or person employed for the purpose in the capacity of a servant or clerk," within the meaning of the Embezzlement Act, 1799. (*R.* v. *Mellish*, R. & R. 80.)

See note to *workman*, *supra*.

Contributions made by an employer on behalf of a workman shall be deemed to be contributions by the workman ;

Two periods of unemployment of not less than two days each, separated by a period of not more than two days, during which the workman has not been employed for more than twenty-four hours, or two periods of unemployment of not less than one week each, separated by an interval of not more than six weeks, shall be treated as a continuous period of unemployment, and the expression "continuously unemployed" shall have a corresponding meaning ;

"**Continuously unemployed.**"—See s. 86 (2) and the Seventh Schedule. The effect of this definition is that a workman who in a period of eight weeks is unemployed for two separate weeks can draw benefit in respect of the second week, and two days' work during a spell of unemployment has no effect whatever upon the benefits. S. 107 (1)

Temporary work provided by a central body or distress committee under the Unemployed Workmen Act, 1905, or towards the provision of which any such central body or distress committee has contributed under that Act, shall not be deemed to be employment in an insured trade;

A workman shall not be deemed to be unemployed whilst he is following any remunerative occupation in an insured trade, or whilst he is following any other occupation from which he derives any remuneration or profit greater than that which he would derive from the receipt of unemployment benefit under this Part of this Act;

"**Remunerative occupation in an insured trade.**"—Work under a distress committee will not therefore deprive the workman of benefit unless he receives more than 7*s.* a week.

"**Remuneration.**"—"'Remuneration' means a quid pro quo. Whatever consideration a person gets for giving his services seems to me a 'Remuneration' for them. Consequently, if a person was in receipt of a payment or of a percentage, or any kind of payment which would not be an actual money payment, the amount he would receive annually in respect of this would be 'remuneration'" (per Blackburn, J., in *R.* v. *Postmaster-General*, 1 Q.B.D. 603, at p. 664). It appears therefore that payment made primarily from charitable motives—as to a street singer—is not remuneration. Cf. the First Schedule, Part II (*g*), under s. 1 (2), and the Second Schedule, under s. 4 (1), and notes.

"**Greater than that which he would derive.**"—Some question is likely to arise as to the method of computing remuneration or profit for the purpose of this comparison. A workman may make larger profit in parts of several days by shovelling snow than by drawing unemployment benefit, and yet make less profit in a week. It is submitted that as the rate of benefit is throughout measured by the week, the week is the proper unit of comparison.

S. 107 (1)

A workman shall not, for the purposes of contributions, be deemed to be employed in any period in respect of which he receives no remuneration from his employer, notwithstanding that he continues during such period in his employment;

A workman is not in these circumstances to be deemed to be unemployed. There are no contributions and no benefits while such employment continues; cf. case of a factory working short time during a period of distress, and see s. 94 and note thereto *supra*.

The provision will in fact apply to holidays without pay, during which it is clear that employment continues. See *Jones* v. *Ocean Coal Coy.* (1899), 2 Q.B. 124.

The expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any persons, whether workmen in the employment of the employer with whom the dispute arises or not.

Cf. ss. 86, 87.

This definition is taken from the Trade Disputes Act, 1906. See note to s. 86 *supra*.

(2) In determining any question as to whether any trade in which a workman is or has been employed is an insured trade or not, regard shall be had to the nature of the work in which the workman is engaged rather than to the business of the employer by whom he is employed.

Cf. notes to the Sixth Schedule under s. 83 *supra*.

(3) This Part of this Act shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person,

except to such of those workmen as are serving in an established capacity in the permanent service of the Crown, subject, however, to such modifications as may be made therein by Order in Council for the purpose of adapting the provisions of this Part of this Act to the case of such workmen.

(4) If the Board of Trade are satisfied that any class of workmen are, having regard to their claim to pension or to the other terms of their service, in as permanent a position as that of persons serving in an established capacity in the permanent service of the Crown, the Board of Trade may exempt that class of persons from the provisions of this Part of this Act, and any persons so exempt shall not be deemed to be workmen.

"**Shall not be deemed to be workmen.**"—The umpire is nowhere given power to decide who is a workman, and will therefore have no jurisdiction to decide who falls within an exemption under this subsection.

PART III

General

S. 108

Provisions as to stamps.

108.—Stamps required for the purposes of this Act shall be prepared and issued in such manner as the Commissioners of Inland Revenue, with the consent of the Treasury, may direct, and the said Commissioners may, by regulations in accordance with the provisions of Part I of this Act relating to regulations by the Insurance Commissioners, provide for applying, with the necessary adaptations, as respects such stamps, all or any of the provisions (including penal provisions) of the Stamp Duties Management Act, 1891, as amended by any subsequent Act, and section sixty-five of the Post Office Act, 1908, and may with the consent of the Postmaster-General provide for the sale of such stamps through the Post-Office.

"**The Stamp Duties Management Act, 1891**" (54 & 55 Vict. c. 38), as amended by The Revenue Act, 1898 (61 and 62 Vict. c. 46, ss. 9–13), provides for the sale of stamps and for the repurchase of and allowance for unused stamps, within a period of two years, and for penalising frauds connected with stamps.

"**Section 65 of the Post Office Act, 1908,**" dealing with fictitious stamps.

Outdoor relief.

109.—In granting outdoor relief to a person in receipt of or entitled to receive any benefit under this Act, a board of guardians shall not take into

consideration any such benefit, except so far as such benefit exceeds five shillings a week. S. 109

"**Outdoor relief.**"—This is precisely the same provision as is already made for out-relief in the case of members of Friendly Societies. See 57 & 58 Vict. c. 25, s. 1 ; 4 Edw. 7, c. 32, s. 1.

As to out-relief generally, see the Poor Law Orders, and particularly the General Consolidated Order of 1847.

Priority of claims for contributions due by bankrupt employers.

110.—(1) There shall be included among the debts which, under section one of the Preferential Payments in Bankruptcy Act, 1888, and section two hundred and nine of the Companies (Consolidation) Act, 1908, are, in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all contributions payable under this Act by the bankrupt or the company in respect of employed contributors or workmen in an insured trade during the four months before the date of the receiving order, or, as the case may be, the commencement of the winding up or the winding-up order, and those Acts shall have effect accordingly, and formal proof of the debts to which priority is given under this section shall not be required except in cases where it may otherwise be provided by rules made under the Bankruptcy Act, 1883, or the Companies (Consolidation) Act, 1908.

"**Debts . . . . to be paid in priority.**"—The other such debts are rates and taxes for twelve months last past, wages or salary of any clerk or servant for four months and up to £50, wages of any labourer or workman for two months and up to £25, and sums due under the Workmen's Compensation Act, 1906 [51 & 52 Vict. c. 62, s. 1 (1) ; 6 Edw. 7, c. 58, s. 5 (3) ; 8 Edw. 7, c. 69, s. 209 (1)]. These debts rank equally among themselves, and are entitled to be paid in full in priority to all other debts [51 & 52 Vict. c. 62, s. 1 (2) ; 8 Edw. 7, c. 69, s. 209 (2)].

(2) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887,

S. 110 (2) such contributions as aforesaid shall, if payable in respect of a miner, have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly.

"**A company within the Stannaries Act, 1887.**"—*i.e.* any persons or partnership body, joint stock company, etc., engaged in or formed for working mines within the stannaries of Cornwall and Devon (50 & 51 Vict. c. 43, s. 2).

"**Priority conferred on miners.**"—See s. 4 of that Act. The privilege conferred is subject in the case of a limited company to the claims of clerks, servants and labourers under the Companies Acts, set out in the note of subs. (1) hereof.

(3) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

(4) In the application of this section to Scotland, a reference to section three of the Bankruptcy (Scotland) Act, 1875, and the respective dates therein mentioned shall be substituted for the reference to section one of the Preferential Payments in Bankruptcy Act, 1888, and the date of the receiving order; and an Act of Sederunt under the Bankruptcy Amendment (Scotland) Act, 1856, shall be substituted for rules under the Bankruptcy Act, 1883.

(5) In the application of this section to Ireland a reference to section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, shall be substituted for the reference to section one of the Preferential Payments in Bankruptcy Act, 1888; and a reference to general orders made under the first-mentioned Act shall be substituted for the reference to rules made under the Bankruptcy Act, 1883; and any reference to a bankrupt shall include

a reference to an arranging debtor ; and the reference to the receiving order shall be construed as a reference to the order of adjudication in the case of a bankrupt, or to the filing of the petition for arrangement in the case of an arranging debtor. S. 110 (5)

111.—Every assignment of, or charge on, and every agreement to assign or charge, any of the benefits conferred by this Act shall be void, and, on the bankruptcy of any person entitled to any such benefit, the benefit shall not pass to any trustee or other person acting on behalf of his creditors. Benefits to be inalienable.

112.—(1) An inspector appointed under this Act shall, for the purposes of the execution of this Act, have power to do all or any of the following things, namely :— Powers of inspectors

(*a*) to enter at all reasonable times any premises or place, other than a private dwelling-house not being a workshop, where he has reasonable grounds for supposing that any employed contributors or workmen in an insured trade are employed ;

(*b*) to make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are complied with in any such premises or place ;

(*c*) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under this Act, every person whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an employed contributor or workman in an insured trade, and to require every such person to be so

S. 112 (1) (c) —

examined, and to sign a declaration of the truth of the matters in respect of which he is so examined;

(d) to exercise such other powers as may be necessary for carrying this Act into effect.

"**Appointed under this Act.**"—Including a Home Office or other Government inspector acting under this Act. See subs. (4) hereof. See ss. 57 (3), 89 (2). As to powers of inspectors in relation to Friendly Societies, see s. 57 (5), and note thereto.

(2) The occupier of any such premises or place and any other person employing any employed contributor or workman in an insured trade, and the servants and agents of any such occupier or other person, and any employed contributor or workman in an insured trade shall furnish to any inspector all such information and shall produce for inspection all such registers, books, cards, and other documents as the inspector may reasonably require.

(3) If any person wilfully delays or obstructs an inspector in the exercise of any power under this section or fails to give such information or to produce such documents as aforesaid, or conceals or prevents or attempts to conceal or prevent any person from appearing before or being examined by an inspector, he shall be liable on summary conviction to a fine not exceeding five pounds:

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

The foregoing subsections, except for the exemption of a private dwelling-house, are taken almost literally from s. 119 of the Factory and Workshop Act, 1901.

(4) Where any such premises or place are liable to be inspected by inspectors or other officers,

or are under the control, of some other Government department, the Insurance Commissioners or Board of Trade may make arrangements with that other Government department for any of the powers and duties of inspectors under this section being carried out by inspectors or other officers of such other Government department, and, where such an arrangement is made, such inspectors and officers shall have all the powers of an inspector under this section. S. 112 (4)

"**Inspectors of some other Government Department.**"—The Home Office has power to inspect under the Coal Mines Regulation Acts, the Factory Acts, the Employment of Children Act, 1903, and a variety of other Acts.

The inspectors acting under these Acts have power to undertake the duties of inspection under the present Statute and also under the Truck Acts, the Elementary Education Acts, etc.

The Board of Trade has powers of inspection under the Railway Employment Act, 1900; and their inspectors under the Weights and Measures Act, 1878, have power to visit various coal mines, shops, etc. It is, however, submitted that as the duty of these latter inspectors is not to inspect the "premises or place," but only the weights and measures there used, this subsection does not apply to them.

(5) Every inspector shall be furnished with the prescribed certificate of his appointment, and on applying for admission to any premises for the purposes of this Act shall, if so required, produce the said certificate to the occupier.

"**Certificate.**"—See s. 57 (4).

"**Appointment.**"—See s. 57 (3), s. 89 (2).

113.—(1) Sections eighty and eighty-one of the Factory and Workshop Act, 1901, relating to the making of regulations under that Act, as set out and adapted in the Ninth Schedule to this Act, shall apply to special orders made under this Act. Procedure for making special orders.

(2) Before a special order (other than a special order excluding any occupation from the occupations which are to be deemed employment in an insured

S. 113 (2) trade) comes into force, it shall be laid before each House of Parliament for a period of not less than thirty days during which the House is sitting, and, if either of those Houses before the expiration of those thirty days presents an address to His Majesty against the order or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new order.

NINTH SCHEDULE.

Provisions of the Factory and Workshop Act, 1901, applied to Special Orders made under this Act.

80.—(1) Before the authority empowered to make special orders make any special order under this Act, they shall publish, in such manner as they may think best adapted for informing persons affected, notice of the proposal to make the order, and of the place where copies of the draft order may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the draft order by or on behalf of persons affected must be sent to the authority.

(2) Every objection must be in writing and state—

(*a*) the draft order or portions of draft order objected to;

(*b*) the specific grounds of objection; and

(*c*) the omissions, additions, or modifications asked for.

(3) The authority shall consider any objection made by or on behalf of any persons appearing to them to be affected which is sent to them within the required time, and they may, if they think fit, amend the draft order, and shall then cause the amended draft to be dealt with in like manner as an original draft.

(4) Where the authority does not amend or withdraw any draft order to which any objection has been made, then (unless the objection either is withdrawn or appears to them to be frivolous) they shall, before making the order, direct an inquiry to be held in the manner hereinafter provided.

81.—(1) The authority may appoint a competent and impartial person to hold an inquiry with regard to any draft order, and to report to them thereon. S. 113 (2)

(2) The inquiry shall be held in public, and any objector and any other person who, in the opinion of the person holding the inquiry, is affected by the draft order, may appear at the inquiry either in person or by counsel, solicitor, or agent.

(3) The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

(4) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the authority.

(5) The fee to be paid to the person holding the inquiry shall be such as the authority may direct and shall be deemed to be part of the expenses of the authority in carrying this Act into effect.

(6) For the purposes of this Schedule the expression "authority" means the Insurance Commissioners or the Board of Trade, as the case may be.

"**May appoint.**"—Since, under s. 80 (3) as set out in this Schedule, the authority "shall" hold an inquiry, and since no other provision is made for such inquiry than that contained in s. 81, it follows that the authority not only may but must appoint a person to hold the inquiry.

"**Rules made by the Board of Trade.**"—These rules will presumably be the same as those made by the Home Secretary under the corresponding section of the Factory and Workshop Act, 1901, which are as follows :—

(1) The inquiry shall be opened at such a time and place as may be fixed by the person appointed by the Secretary of State (the authority) to hold the inquiry (in these rules referred to as the "commissioner"), and not less than three weeks' notice of the time and place so fixed shall be sent by post by him or on his behalf to all persons who have sent to the Secretary of State any objection to the draft regulations : Provided that the non-receipt of such notice by any such person shall not invalidate the proceedings or render necessary an adjournment of the inquiry.

(2) The commissioner may adjourn the inquiry from time to time as he sees fit, and may hold adjourned sittings at any place which he thinks necessary for the convenience of persons who objected to the draft regulations.

(3) The commissioner may give such directions as he thinks necessary as to the order in which the draft regulations and the objections thereto shall be considered, and as to the order in which the parties appearing at the inquiry shall be heard.

S. 113 (2) —

(4) If any person who has not made objections to the draft regulations in accordance with s. 80 claims to be heard at the inquiry, the commissioner may require him to state his objection in writing in the manner provided by s. 80 (2).

(5) If the objections to any draft regulation made by more than one person appearing at the inquiry appear to the commissioner to be the same in substance, he may select any person whom he considers representative of the largest number of persons affected by the draft regulation to state such objections, and to call evidence (if required) in support of such objections. Any other person making the same objections may be heard subsequently by consent of the commissioner.

(6) The commissioner may stop any statement which appears to him to be irrelevant to the draft regulation or objection under consideration, or to involve repetition of arguments already fully stated.

(7) Subject to the provisions of s. 81, and to the foregoing rules, all the proceedings shall be conducted in such manner as the commissioner may direct.

Provisions as to birth certificates.

114.—Where, for the purposes of this Act, the age of any person is required to be proved by the production of a certificate of birth, any person shall, on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local Government Board for England, Scotland, or Ireland, as the case may be, and on payment of a fee of sixpence, be entitled to obtain a certified copy of the entry of the birth of that person in the birth register, under the hand of the registrar or superintendent registrar having the custody thereof, and forms for such requisition shall on request be supplied without any charge by every registrar of births and deaths and by every superintendent registrar.

Short title and commencement.

115.—This Act may be cited as the National Insurance Act, 1911, and shall, save as otherwise expressly provided by this Act, come into operation on the fifteenth day of July nineteen hundred and twelve:

Provided that His Majesty in Council may, should necessity arise, substitute some subsequent date or dates not being later than the first day of January nineteen hundred and thirteen as respects the provisions of this Act relating to health insurance, and not being later than the first day of October nineteen hundred and twelve as respects the provisions of this Act relating to unemployment insurance. S. 115

SCHEDULES.

FIRST SCHEDULE.

For notes to this Schedule see under s. 1 (2).

PART I.

EMPLOYMENTS WITHIN THE MEANING OF PART I OF THIS ACT RELATING TO HEALTH INSURANCE.

First Schedule —

(*a*) Employment in the United Kingdom under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece or partly by time and partly by the piece, or otherwise, or, except in the case of a contract of apprenticeship, without any money payment.

(*b*) Employment under such a contract as aforesaid as master or a member of the crew of any ship registered in the United Kingdom or of any other British ship or vessel of which the owner, or, if there is more than one owner, the managing owner or manager, resides or has his principal place of business in the United Kingdom.

(*c*) Employment as an outworker (that is to say, a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials for the purposes of the trade or business of the last-mentioned person), unless excluded by a special order made by the Insurance Commissioners, and any such order may exclude outworkers engaged in work of any class, or outworkers of any

class or description specified in the order, or may defer the commencement of this Act as respects all outworkers, and the person who gave out the articles or materials shall in relation to the person to whom he gave them out, be deemed to be the employer.

(*d*) Employment in the United Kingdom in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract of bailment (or in Scotland any contract of letting to hire) in consideration of the payment of a fixed sum or a share in the earnings or otherwise, in which case the owner shall, for the purposes of Part I of this Act, be deemed to be the employer.

Part II.

Exceptions.

(*a*) Employment in the naval or military service of the Crown, including service in Officers Training Corps, except as otherwise provided in Part I of this Act.

(*b*) Employment under the Crown or any local or other public authority where the Insurance Commissioners certify that the terms of the employment are such as to secure provision in respect of sickness and disablement on the whole not less favourable than the corresponding benefits conferred by Part I of this Act.

(*c*) Employment as a clerk or other salaried official in the service of a railway or other statutory company, or of a joint committee of two or more such companies, where the Insurance Commissioners certify that the terms of employment, including his rights in such superannuation fund as is hereinafter mentioned, are such as to secure provision in respect of sickness and disablement, on the whole, not less favourable than the corresponding benefits conferred by Part I of this Act, and the person so employed is entitled to rights in a superannuation fund established by Act of Parliament for the benefit of persons in such employment, or in Ireland is entitled to rights in any such superannuation fund or in any railway superannuation fund which may be approved by the Insurance Commissioners.

(*d*) Employment as a teacher to whom the Elementary School

First Schedule

Teachers Superannuation Act, 1898, or a scheme under section fourteen of the Education (Scotland) Act, 1908, or the National School Teachers (Ireland) Act, 1879, applies, or in the event of any similar enactment being hereafter passed as respects teachers or any class of teachers (other than teachers in public elementary schools) as a teacher to whom such enactment applies.

(*e*) Employment as an agent paid by commission or fees or a share in the profits, or partly in one and partly in another such ways, where the person so employed is mainly dependent for his livelihood on his earnings from some other occupation, or where he is ordinarily employed as such agent by more than one employer, and his employment under no one of such employers is that on which he is mainly dependent for his livelihood.

(*f*) Employment in respect of which no wages or other money payment is made where the employer is the occupier of an agricultural holding and the employed person is employed thereon, or where the person employed is the child of, or is maintained by, the employer.

(*g*) Employment otherwise than by way of manual labour and at a rate of remuneration exceeding in value one hundred and sixty pounds a year, or in cases where such employment involves part-time service only at a rate of remuneration which, in the opinion of the Insurance Commissioners, is equivalent to a rate of remuneration exceeding one hundred and sixty pounds a year for whole-time service.

(*h*) Employment of a casual nature otherwise than for the purposes of the employer's trade or business, and otherwise than for the purposes of any game or recreation where the persons employed are engaged or paid through a club, and in such case the club shall be deemed to be the employer.

(*i*) Employment of any class which may be specified in a special order as being of such a nature that it is ordinarily adopted as subsidiary employment only and not as the principal means of livelihood.

(*j*) Employment as an outworker where the person so employed is the wife of an insured person and is not wholly or mainly dependent for her livelihood on her earnings in such employment.

(*k*) Employment as a member of the crew of a fishing vessel where the members of such crew are remunerated by shares in the profits or the gross earnings of the working of such vessel in accordance with any custom or practice prevailing at any port if

a special order is made for the purpose by the Insurance Commissioners, and the particular custom or practice prevailing at the port is one to which the order applies.

(*l*) Employment in the service of the husband or wife of the employed person.

SECOND SCHEDULE.

For notes to this Schedule see under s. 4 (1).

Rates of Contribution under Part I of this Act relating to Health Insurance.

Part I.

Employed Rate.

In the case of men - - - - -	7*d.* a week.
,, ,, women - - - -	6*d.* ,,

Contributions by Employers and Employed Contributors.

To be paid by the employer - - -		3*d.* a week.
,, ,, contributor - -	Men,	4*d.* ,,
	Women,	3*d.* ,,

In the case of employed contributors of either sex of the age of 21 or upwards whose remuneration does not include the provision of board and lodging by their employer, and the rate of whose remuneration does not exceed 2*s.* 6*d.* a working day, the following shall be the rates of contribution :—

Where the rate of remuneration does not exceed 1*s.* 6*d.* a working day—

		A week.
To be paid by the employer - -	For men,	6*d.*
	,, women,	5*d.*
,, out of moneys provided by Parliament -		1*d.*

Where the rate of remuneration exceeds 1*s.* 6*d.* but does not exceed 2*s.* a working day—

		A week.
To be paid by the employer - -	For men,	5*d.*
	,, women,	4*d.*
,, ,, contributor - - - -		1*d.*
,, out of moneys provided by Parliament		1*d.*

Second Schedule —

Where the rate of remuneration exceeds 2*s.* but does not exceed 2*s.* 6*d.* a working day—

		A week.
To be paid by the employer	For men,	4*d.*
	,, women,	3*d.*
,, ,, contributor		3*d.*

PART II.

Employment Rate in Ireland.

In the case of men	$5\frac{1}{2}$*d.*	a week.
,, ,, women	$4\frac{1}{2}$*d.*	,,

Contributions by Employers and Employed Contributors.

To be paid by the employer		$2\frac{1}{2}$*d.*	a week.
,, ,, contributor	Men,	3*d.*	,,
	Women,	2*d.*	,,

In the case of employed contributors of either sex of the age of 21 or upwards whose remuneration does not include the provision of board and lodging by their employer, and the rate of whose remuneration does not exceed 2*s.* 6*d.* a working day, the following shall be the rates of contribution :—

Where the rate of remuneration does not exceed 1*s.* 6*d.* a working day—

		A week.
To be paid by the employer	For men,	$4\frac{1}{2}$*d.*
	,, women,	$3\frac{1}{2}$*d.*
,, out of moneys to be provided by Parliament		1*d.*

Where the rate of remuneration exceeds 1*s.* 6*d.* but does not exceed 2*s.* a working day—

		A week.
To be paid by the employer	For men,	4*d.*
	,, women,	3*d.*
,, ,, contributor		$\frac{1}{2}$*d.*
,, out of moneys provided by Parliament		1*d.*

Where the rate of remuneration exceeds 2*s.* but does not exceed 2*s.* 6d. a working day—

		A week.
To be paid by the employer	For men,	$3\frac{1}{2}$*d.*
	,, women,	$2\frac{1}{2}$*d.*
,, ,, contributor		2*d.*

THIRD SCHEDULE.

For notes to this Schedule see under s. 4 (2).

Rules as to Payment and Recovery of Contributions paid by Employers on behalf of Employed Contributors under Part I of this Act Relating to Health Insurance.

Third Schedule

(1) A weekly contribution shall be payable for each calendar week during the whole or any part of which an employed contributor has been employed by an employer: Provided that, where one weekly contribution has been paid in respect of an employed contributor in any such week, no further contribution shall be payable in respect of him in the same week, and that, where no remuneration has been received and no services rendered by an employed contributor during any such week, or where no services have been rendered by an employed contributor during any such week and the employed contributor has been in receipt of sickness or disablement benefit during the whole or any part of that week, the employer shall not be liable to pay any contribution either on his own behalf or on behalf of the contributor in respect of that week.

(2) The employer shall, except as hereinafter provided, be entitled to recover from the employed contributor the amount of any contributions paid by him on behalf of the employed contributor.

(3) Except where the employed contributor does not receive any wages or other pecuniary remuneration from the employer, the amounts so recoverable shall, notwithstanding the provisions of any Act or any contract to the contrary, be recoverable by means of deductions from the wages or other remuneration, and not otherwise; but no such deductions may be made from any wages or remuneration other than such as are paid in respect of the period or part of the period in respect of which the contribution is payable, or in excess of the sum which represents the amount of the contributions for the period (if such period is longer than a week) in respect of which the wages or other remuneration are paid.

Third Schedule

(4) Where a contribution paid by the employer on behalf of an employed contributor is recoverable from the contributor but is not recoverable by means of deductions as aforesaid, it shall (without prejudice to any other means of recovery) be recoverable summarily as a civil debt, but no such contribution shall be recoverable unless proceedings for the purpose are instituted within three months from the date when the contribution was payable.

(5) Where the contributor is employed by more than one employer in any calendar week, the first person employing him in that week or such other employer or employers as may be prescribed shall be deemed to be the employer for the purposes of the provisions of Part I of this Act relating to the payment of contributions and of this schedule.

(6) Regulations of the Insurance Commissioners may provide that in any cases or classes of cases where employed contributors work under the general control and management of some person other than their immediate employer, such as the owner, agent, or manager of a mine or quarry, or the occupier of a factory or workshop, such person shall, for the purposes of the provisions of Part I of this Act relating to the payment of contributions and of this schedule, be treated as the employer, and may provide for allowing him to deduct the amount of any contributions (other than employer's contributions) which he may become liable to pay from any sums payable by him to the immediate employer, and for enabling the immediate employer to recover from the employed contributors the like sums and in the like manner as if he were liable to pay the contributions.

(7) Where the contributor is not paid wages or other money payments by his employer or any other person, the employer shall be liable to pay the contributions payable both by himself and the contributor, and shall not be entitled to recover any part thereof from the contributor.

(8) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages of or otherwise to recover from the contributor the employer's contribution.

(9) Any sum deducted by any employer from wages or other remuneration under this schedule shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted.

(10) The Insurance Commissioners may, by regulations, provide

that in the case of outworkers the contributions to be paid may be determined by reference to the work actually done, instead of by reference to the weeks in which work is done, and any such regulations may apply to all trades or to any specified classes or branches of trades, and may determine the conditions to be complied with by employers who adopt such a system of payment of contributions.

(11) For the purposes of this schedule the expression "calendar week" means the period from midnight on one Sunday to midnight on the following Sunday.

FOURTH SCHEDULE.

Benefits under Part I of this Act relating to Health Insurance.

Part I.

Rates of Benefits.

Table A.—*Ordinary Rates.*

For notes to this Table see under s. 8 (2).

Sickness benefit: for men, the sum of 10*s.* a week throughout the whole period of twenty-six weeks; for women, the sum of 7*s.* 6*d.* a week throughout the whole period of twenty-six weeks.

Disablement benefit: the sum of 5*s.* a week for men and women alike.

Table B.—*Reduced Rates in the case of Unmarried Minors.*

For notes to this Table see under s. 9 (1).

Sickness benefit—for males, the sum of 6*s.* a week during the first thirteen weeks and the sum of 5*s.* a week during the second thirteen weeks.

for females, the sum of 5*s.* a week for the first thirteen weeks and the sum of 4*s.* a week for the second thirteen weeks.

Disablement benefit—for females, the sum of 4*s.* a week.

Fourth Schedule —

TABLE C.—*Reduced Rates for Persons over Fifty in certain cases.*

For notes to this Table see under s. 9 (3).

Where the insured person is over 50 and under 60 at the time of becoming an employed contributor—

For men, the sum of 7*s.* a week throughout the whole period of twenty-six weeks.

For women, the sum of 6*s.* a week throughout the whole period of twenty-six weeks.

Where the insured person is over 60 at the time of becoming an employed contributor—

For both men and women, the sum of 6*s.* a week for the first thirteen weeks, and 5*s.* a week during the second thirteen weeks.

TABLE D.—*Rates and Conditions for Married Women.*

For notes to this Table see under s. 44 (2) (*b*).

Sickness benefit: during the first thirteen weeks, the sum of 5*s.* a week; during the second thirteen weeks, 3*s.* a week.

Disablement benefit: the sum of 3*s.* a week.

Sickness benefit and disablement benefit shall not be payable during the two weeks before and four weeks after confinement, except in respect of a disease or disablement neither directly nor indirectly connected with childbirth.

PART II.

For notes to this Part of the Schedule see under s. 8 (1) (*f*).

Additional Benefits.

(1) Medical treatment and attendance for any persons dependent upon the labour of a member.

(2) The payment of the whole or any part of the cost of dental treatment.

(3) An increase of sickness benefit or disablement benefit in the case either of all members of the society or of such of them as have any children or any specified number of children wholly or in part dependent upon them.

(4) Payment of sickness benefit from the first, second, or third day after the commencement of the disease or disablement.

(5) The payment of a disablement allowance to members though not totally incapable of work.

(6) An increase of maternity benefit.

(7) Allowances to a member during convalescence from some disease or disablement in respect of which sickness benefit or disablement benefit has been payable.

(8) The building or leasing of premises suitable for convalescent homes and the maintenance of such homes.

(9) The payment of pensions or superannuation allowances whether by way of addition to old age pensions under the Old Age Pensions Act, 1908, or otherwise.

(10) The payment, subject to the prescribed conditions, of contributions to superannuation funds in which the members are interested.

(11) Payments to members who are in want or distress including the remission of arrears whenever such arrears may have become due.

(12) Payments for the personal use of a member who, by reason of being an inmate of a hospital or other institution, is not in receipt of sickness benefit or disablement benefit.

(13) Payments to members not allowed to attend work on account of infection.

(14) Repayment of the whole or any part of contributions thereafter payable under Part I of this Act by members of the society or any class thereof.

Part III.

For notes to this Part of this Schedule see under s. 44 (2).

Benefits for Married Women who do not become Voluntary Contributors at reduced Rates.

Payment of the sum of 5*s.* a week on confinement during a period not exceeding four weeks on any one occasion.

Payments during any period of sickness or distress, subject to regulations made by the Insurance Commissioners and to the discretion of the society or committee administering the benefit.

FIFTH SCHEDULE.

For notes to this Schedule see under s. 10 (2).

Reduction or Postponement of Sickness Benefit and Where Contributions are in Arrear.

Fifth Schedule

Table.

(1) Where the Arrears amount to	(2) Rates of Sickness Benefit. Men. s. d.	Women. s. d.
4 contributions a year on average	9 6	7 3
5 ,, ,, ,, -	9 0	7 0
6 ,, ,, ,, -	8 6	6 9
7 ,, ,, ,, -	8 0	6 6
8 ,, ,, ,, -	7 6	6 3
9 ,, ,, ,, -	7 0	6 0
10 ,, ,, ,, -	6 6	5 9
11 ,, ,, ,, -	6 0	5 6
12 ,, ,, ,, -	5 6	5 3
13 ,, ,, ,, -	5 0	5 0
For both Men and Women.	5s. 0d., commencing 5th day after commencement of illness.	
	,, ,, 6th ,, ,,	
	,, ,, 7th ,, ,,	
	,, ,, 8th ,, ,,	
	,, ,, 9th ,, ,,	
	,, ,, 10th ,, ,,	
	,, ,, 11th ,, ,,	
	,, ,, 12th ,, ,,	
	,, ,, 13th ,, ,,	
	,, ,, 14th ,, ,,	

Notes.

Where the insured person is, by virtue of any of the provisions of Part I of this Act, other than those relating to arrears, entitled to sickness benefit at a rate lower than the full rate, this Table shall have effect as if the entries in the first column were so shifted down that the first entry therein was set opposite the entry in the second column next below the entry specifying the rate of sickness benefit to which the insured person is entitled.

When the rate of sickness benefit during the first thirteen weeks to which the insured person is entitled is, by virtue of any of the

provisions of this Act, other than those relating to arrears, less than 5*s*. a week, this Table shall have effect as if such lower rate were therein substituted for the rate of 5*s*. a week.

SIXTH SCHEDULE.

For notes to this Schedule see under s. 84.

List of Insured Trades for the purposes of Part II of this Act relating to Unemployment Insurance.

(1) Building; that is to say, the construction, alteration, repair, decoration, or demolition of buildings, including the manufacture of any fittings of wood of a kind commonly made in builders' workshops or yards.

(2) Construction of works; that is to say, the construction, reconstruction, or alteration of railroads, docks, harbours, canals, embankments, bridges, piers or other works of construction.

(3) Shipbuilding; that is to say, the construction, alteration, repair or decoration of ships, boats or other craft by persons not being usually members of a ship's crew, including the manufacture of any fittings of wood of a kind commonly made in a shipbuilding yard.

(4) Mechanical engineering, including the manufacture of ordnance and firearms.

(5) Ironfounding, whether included under the foregoing headings or not.

(6) Construction of vehicles; that is to say, the construction, repair, or decoration of vehicles.

(7) Sawmilling (including machine woodwork) carried on in connection with any other insured trade or of a kind commonly so carried on.

SEVENTH SCHEDULE.

For notes to this Schedule see under s. 84.

Rates and Periods of Unemployment Benefit.

In respect of each week following the first week of any period of unemployment, seven shillings, or such other rates as may be prescribed either generally or for any particular trade or any branch thereof:

Seventh Schedule

Provided that, in the case of a workman under the age of eighteen, no unemployment benefit shall be paid while the workman is below the age of seventeen, and while the workman is of the age of seventeen or upwards but below the age of eighteen, unemployment benefit shall only be paid at half the rate at which it would be payable if the workman was above the age of eighteen.

No workman shall receive unemployment benefit for more than fifteen or such other number of weeks as may be prescribed either generally or for any particular trade or branch thereof within any period of twelve months, or in respect of any period less than one day.

No workman shall receive more unemployment benefit than in the proportion of one week's benefit for every five contributions paid by him under this Act:

Provided that for the purpose of the foregoing paragraph—

(*a*) in the case of a workman who satisfies the Board of Trade that he is over the age of twenty-one and has habitually worked at an insured trade before the commencement of this Act, there shall be deemed to be added to the number of contributions which he has actually paid five contributions for each period of three months or part of such period during which he has so worked before the commencement of this Act, up to a maximum of twenty-five contributions; and

(*b*) where, owing to the fact that the wages or other remuneration of a workman are paid at intervals greater than a week, or for any other like reason contributions are paid under Part II of this Act in respect of any workman at intervals greater than a week, that workman shall be entitled to treat each of such contributions as so many contributions as there are weeks in the period for which the contribution has been paid.

Any time during which a workman is, under Part II of this Act, disqualified for receiving unemployment benefit shall be excluded in the computation of periods of unemployment under this schedule.

A period of unemployment shall not be deemed to commence till the workman has made application for unemployment benefit in such manner as may be prescribed.

The power conferred by this schedule on the Board of Trade

to prescribe rates and periods of unemployment benefit shall not be exercised so as to increase the rate of benefit above eight shillings per week or reduce it below six shillings per week, or to increase the period of unemployment benefit above fifteen weeks, or to alter the proportion which the period of benefit bears to the number of contributions paid, except by rules confirmed by an order made in accordance with the provisions of this Act relating to special orders.

Seventh Schedule

EIGHTH SCHEDULE.

For notes to this Schedule see under s. 85 (2).

Contributions for the purposes of Part II of this Act relating to Unemployment Insurance.

Rates of Contribution from Workmen and Employers.

From every workman employed in an insured trade for every week he is so employed - - -	$2\frac{1}{2}d.$
From every employer by whom one or more workmen are employed in an insured trade, in respect of each workman, for every week he is so employed	$2\frac{1}{2}d.$

Provided that, in the case of a workman below the age of eighteen, 1*d.* shall be substituted for $2\frac{1}{2}d.$ as the contribution from the workman and from the employer, but, for the purpose of reckoning the number of contributions in respect of such a workman except as regards the payment of unemployment benefit before he reaches the age of eighteen, the 1*d.* shall be treated as two-fifths of a contribution.

Every such period of employment of less than a week shall, for the purposes of this schedule, be treated as if it were employment for a whole week, except that, where the period of employment is two days or less, the contributions both of the employer and of the workman shall be reduced to one penny if the period does not exceed one day and to twopence if it exceeds one day; and, in such case, in reckoning the number of contributions under Part II of this Act and the schedules therein referred to, contributions at such reduced rates shall be treated as two-fifths or four-fifths of a contribution as the case may require.

NINTH SCHEDULE.

For notes to this Schedule see under s. 113.

Provisions of the Factory and Workshop Act, 1901, applied to Special Orders made under this Act.

Ninth Schedule

80.—(1) Before the authority empowered to make special orders make any special order under this Act, they shall publish, in such manner as they may think best adapted for informing persons affected, notice of the proposal to make the order, and of the place where copies of the draft order may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the draft order by or on behalf of persons affected must be sent to the authority.

(2) Every objection must be in writing and state—

(*a*) the draft order or portions of draft order objected to;
(*b*) the specific grounds of objection; and
(*c*) the omissions, additions, or modifications asked for.

(3) The authority shall consider any objection made by or on behalf of any persons appearing to them to be affected which is sent to them within the required time, and they may, if they think fit, amend the draft order, and shall then cause the amended draft to be dealt with in like manner as an original draft.

(4) Where the authority do not amend or withdraw any draft order to which any objection has been made, then (unless the objection either is withdrawn or appears to them to be frivolous) they shall, before making the order, direct an inquiry to be hed in the manner hereinafter provided.

81.—(1) The authority may appoint a competent and impartial person to hold an inquiry with regard to any draft order, and to report to them thereon.

(2) The inquiry shall be held in public, and any objector and any other person who, in the opinion of the person holding the inquiry, is affected by the draft order, may appear at the inquiry either in person or by counsel, solicitor, or agent.

(3) The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

(4) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the authority.

(5) The fee to be paid to the person holding the inquiry shall be such as the authority may direct and shall be deemed to be part of the expenses of the authority in carrying this Act into effect.

(6) For the purposes of this schedule, the expression "authority" means the Insurance Commissioners or the Board of Trade, as the case may be.

APPENDIX I

NATIONAL INSURANCE (JOINT COMMITTEE) REGULATIONS

DRAFT, DATED 11TH JANUARY, 1912, OF REGULATIONS TO BE MADE BY THE TREASURY UNDER SECTION 83 OF THE NATIONAL INSURANCE ACT, 1911.

In pursuance of the powers conferred upon them by section 83 of the National Insurance Act, 1911, and of every other power enabling them in this behalf, the Lords Commissioners of His Majesty's Treasury hereby without prejudice to any further exercise of such powers make the following Regulations:—

1. These regulations may be cited as the National Insurance (Joint Committee) Regulations, 1912.

2.—(1) Expressions used in these Regulations have the same meaning as in Part I of the National Insurance Act, 1911 (in these Regulations called "the Act") and

"The several bodies of Commissioners" means the Insurance Commissioners, the Scottish Insurance Commissioners, the Irish Insurance Commissioners, and the Welsh Insurance Commissioners, appointed for the purposes of Part I of the Act, or such one or more of such bodies as in any particular case may be concerned.

"The Joint Committee" means the Joint Committee of the several bodies of Commissioners to be constituted under section 83 of the Act.

"Part of the United Kingdom" means England, Scotland, Ireland, or Wales.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations in like manner as it applies to the interpretation of an Act of Parliament.

3.—(1) The Joint Committee shall consist of—

(*a*) the chairmen for the time being of the several bodies of Commissioners (who shall be *ex officio* members of such committee);

(*b*) such other members (if any) of each such body as the Treasury shall from time to time by warrant appoint;

(*c*) so many and such other persons (not exceeding two in number) as the Treasury shall in like manner appoint, and

(*d*) a chairman to be appointed by the Treasury in like manner.

(2) The Treasury may from time to time by warrant appoint any member of the Joint Committee to be vice-chairman thereof, and such vice-chairman shall preside at any meeting of the Joint Committee which the chairman shall be unable to attend. If both the chairman and vice-chairman are absent, the members present at the meeting shall elect from among themselves a chairman for that meeting.

(3) If the chairman of any of the several bodies of Commissioners shall be unable to attend at any meeting of the Joint Committee, the deputy chairman of that body or, if he is unable to attend, such other member of that body as the body shall appoint, shall for the purpose of such meeting be a member of the Joint Committee in his place.

(4) At every meeting of the Joint Committee four shall form a quorum and every member present shall have one vote, but in case of an equality of votes, the chairman of the Joint Committee or, in his absence, the vice-chairman (if present), shall have a casting vote.

(5) Subject as aforesaid, the Joint Committee may regulate the procedure of its meetings and the manner in which and the times at which meetings are to be called.

4. The Joint Committee may, under subsection (2) of section 83 of the Act, make such financial adjustments as may be necessary between the several funds under the control and management of the several bodies of Commissioners, and shall exercise alone the power conferred by subsection (3) of that section of making regulations as to the valuation of societies and branches which have amongst their members persons resident in more than one part of the United Kingdom.

5. For the purposes of the provisions of the Act relating to contributions, the Joint Committee shall exercise jointly with the several bodies of Commissioners the following powers, namely:—

(*a*) under subsection (1) of section 4 and subsection (1) of section 5 of the Act, the power of prescribing the intervals at which contributions payable in respect

of employed contributors and voluntary contributors respectively are to be payable.

(*b*) under paragraph (4) of section 4 of the Act, the power of prescribing the account to which contributions which an employer is liable to pay under that subsection are to be carried and the manner in which the same are to be dealt with.

(*c*) under section 7 of the Act, the power of making regulations for matters incidental to the payment and collection of contributions.

(*d*) under paragraph (5) of the Third Schedule to the Act, the power of prescribing the employer or employers who shall be deemed to be the employer for the purposes of the provisions of Part I of the Act relating to the payment of contributions and of that Schedule in cases where a contributor is employed by more than one employer in any calendar week.

(*e*) under paragraph (6) of the said Third Schedule the power of making regulations with reference to the cases and classes of cases of employment referred to in that paragraph.

(*f*) under paragraph (10) of the said Third Schedule, the power of making regulations providing for the determination of the contributions to be paid in the case of outworkers by reference to the work actually done.

6. For the purposes of section 10 of the Act (which relates to insured persons whose contributions are in arrears), the Joint Committee alone shall exercise the power:—

(*a*) of prescribing the manner in which a sum credited to an approved society in respect of an insured person who is suspended from all benefits under subsection (1) of that section is to be calculated, the account to which such sum is to be carried, and the manner in which the same is to be dealt with.

(*b*) of prescribing under subsection (3) of that section the proportionate reduction of benefits to which a voluntary contributor who is in arrears is to be liable.

(*c*) of prescribing under subsection (7) of that section the manner in which the average amount of arrears for the purposes of that section is to be calculated.

7. For the purposes of section 15 and paragraph (*d*) of section 42 of the Act (which relate to medical benefit) the Joint Committee shall exercise jointly with the several bodies of Commissioners the following powers, namely:—

(*a*) under subsection (1) of section 15, the power to make regulations governing arrangements for administering medical benefit.

(*b*) under paragraph (*b*) of subsection (2) of section 15, the power of removing names from the list of medical practitioners and of prescribing the inquiry to be made before such removal is effected.

(*c*) the power of dispensing with the necessity of the adoption of such system as is mentioned in subsection (2) of section 15 and of authorising Insurance Committees to make other arrangements and of approving such arrangements and the power of making arrangements or of suspending the right to medical benefit in manner mentioned in that subsection.

(*d*) under subsection (5) of section 15, the power to make regulations governing arrangements for the supply of drugs, medicines, and appliances.

(*e*) under paragraph (*b*) of subsection (5) of section 15, the power of determining whether the inclusion or continuance of a person, firm, or body corporate in such list as is mentioned in that subsection would be prejudicial to the efficiency of the service.

(*f*) under paragraph (i) of the lastly mentioned subsection, the power of dispensing with the necessity of the adoption of such system as in that subsection is mentioned and of authorising Insurance Committees to make other arrangements and of approving such arrangements.

(*g*) under paragraph (ii) of the lastly mentioned subsection, the power to make regulations permitting arrangements to be made by Insurance Committees with medical practitioners for the supply of drugs or medicines to insured persons.

(*h*) under subsection (6) of section 15, the power of determining, in default of agreement between an approved society and an Insurance Committee, the sum to be paid in any year to such Committee in respect of medical benefit and the cost of administration thereof.

(*i*) under paragraph (*d*) of section 42, the power of consenting to any determination by an Insurance Committee of the sum payable in any year in respect of deposit contributors for the purposes of the cost of medical benefit.

8.—(1) For the purposes of the provisions of the Act relating to approved societies, the Joint Committee alone shall, in the case of any society and any separate section of a society which has among its members insured persons resident in more than one part of the United Kingdom, exercise the following powers, namely :—

(*a*) the power of approving and of withdrawing approval, and, where approval has been withdrawn from a society, of making provision with respect to members thereof who are insured persons.

(*b*) the power of approving any scheme submitted under section 25 of the Act.

(*c*) if the Joint Committee shall so require, the powers given by section 26 of the Act of determining what security is sufficient to be given, of dispensing with security, of varying the amount of security, and of consenting to a substitution of securities.

(*d*) the power of approving rules providing for any of the matters mentioned in subsection (1) of section 27 of the Act.

(*e*) under section 28 of the Act the power of consenting to the secession or withdrawal of branches, of approving any provision made by a seceding or withdrawing branch for the transfer of such of its members as are insured persons, of sanctioning the dissolution of societies and branches, and of approving, in the case of a branch which it is proposed to expel, any provision made with respect to any members thereof who are insured persons.

(2) The power of prescribing the character of the constitution which a society not registered or established under any Act of Parliament or by Royal Charter must have before it can be approved by the several bodies of Commissioners or the Joint Committee shall be exerciseable by the Joint Committee alone.

(3) Where a society or separate section of a society has been approved by the body of Commissioners concerned, and such approval has not been withdrawn, such society or section may apply to the Joint Committee for its approval, and the Joint Committee may grant the same, and thereafter the society or section shall, but without prejudice to any subsequent withdrawal of approval, continue to be an approved society notwithstanding that it subsequently have among its members insured persons resident in more than one part of the United Kingdom.

9. For the purposes of the provisions of the Act relating to the accounts and valuations of and surpluses and deficiencies shown by approved societies and branches of approved societies, the Joint Committee alone shall exercise the following powers, namely:—

(*a*) under subsection (1) of section 35 of the Act, the power of prescribing the form in which the books and accounts under Part I of the Act of such societies and branches are to be kept and of requiring such societies and branches to render returns.

(*b*) under section 36 of the Act, the power of appointing the times at which and of prescribing the basis on which valuations of the assets and liabilities arising under Part I of the Act of such societies and branches are to be made.

(*c*) under subsection (2) of section 38 of the Act, the power of prescribing the manner in which the capitalised value of levies and diminution of benefits is to be ascertained;

and the Joint Committee shall exercise jointly with the several bodies of Commissioners the following powers, namely:—

(i) under section 37 of the Act, the power of sanctioning schemes for distributing additional benefits out of any such surplus;

(ii) under section 38 of the Act, the power of sanctioning schemes for making good any such deficiency.

Provided that, in exercising the powers mentioned in paragraphs (i) and (ii) hereof, the Joint Committee shall be concerned only with the actuarial soundness of such schemes.

10. For the purposes of section 44 of the Act (which relates to married women) the Joint Committee alone shall exercise the following powers, namely:—

(*a*) under subsection (1) of that section, the power of making regulations subject to which a married woman ceasing to be suspended from receiving the ordinary benefits under that subsection is for the purposes of those benefits to be treated as if she had not previously been an insured person.

(*b*) under subsection (10) of that section, the power of prescribing the manner in which transfer values are to be calculated for the purposes of that section.

(*c*) under subsection (12) of that section, the power of prescribing the adjustments to be made under that subsection.

11. For the purposes of section 48 of the Act (which relates to the mercantile marine) the Joint Committee alone shall exercise the following powers, namely:—

(*a*) under subsection (5) of that section, the power of approving any scheme prepared by the Board of Trade for the management of the affairs of the Seamen's National Insurance Society.

(*b*) under subsection (7) of that section, the power of approving, with the Board of Trade, any scheme prepared by the committee of management under that subsection.

(*c*) under subsection (12) of that section, the power of prescribing the modifications subject to which the

provisions of Part I of the Act relating to the administration of medical benefit and sanatorium benefit are to apply in the case of members of the Seamen's National Insurance Society.

12. (1) The Joint Committee alone shall exercise the following powers relating to financial matters, namely—

(*a*) under subsection (4) of section 54 of the Act, the power of prescribing the rate per annum at which interest is to be credited to the Post Office fund and to the Navy and Army Insurance Fund.

(*b*) under subsection (1) of section 56 of the Act, the power of making regulations with respect to crediting and debiting sums to the several societies and as to the payments to be made by and to the Commissioners to and by societies, the power of prescribing the rate per annum at which interest is to be credited to societies, the power of receiving notices from societies, and the power of prescribing the modifications subject to which the regulations made under that subsection are to apply to a society giving such notice.

(*c*) under subsection (4) of section 56 of the Act, the power of prescribing the manner in which sums received by way of interest or dividend on investments are to be applied by approved societies.

(2) The Joint Committee shall exercise jointly with the several bodies of Commissioners the power under subsection (2) of section 56 of the Act, of approving securities in which approved societies may invest sums paid to them for investment.

13. The Joint Committee alone, shall exercise the power of making the following tables, namely :—

(*a*) under subsection (1) of section 5 of the Act, the tables in accordance with which the voluntary rate is to be ascertained.

(*b*) under subsection (2) of section 6 of the Act, the tables in accordance with which additions are to be made to the reduced rate of sickness benefit payable under that subsection.

(*c*) under subsection (4) of section 9 of the Act, tables in accordance with which the reduced rate payable in the case of the persons referred to in that subsection is to be fixed.

(*d*) under subsection (1) of section 31 of the Act, tables in accordance with which transfer values are to be calculated.

(*e*) under subsection (1) of section 44 of the Act, tables according to which reserve values are to be calculated for the purposes of that subsection.

(*f*) under subsection (1) of section 55 of the Act, tables showing reserve values.

14. For the purposes of the provisions of the Act relating to the making of special orders, the Joint Committee alone shall exercise the power of making such orders :—

(*a*) under subsection (2) of section 1 of the Act, providing for the inclusion amongst the persons employed within the meaning of Part I of the Act of any persons engaged in any of the excepted employments specified in Part II of the First Schedule to the Act.

(*b*) under section 20 of the Act, providing for the reinsurance of the liabilities of approved societies in respect of maternity benefit.

(*c*) under subsection (8) of section 46 of the Act, specifying the cases in and the circumstances under which that subsection is to apply to a man who was not immediately before the training therein mentioned an insured person.

And the Joint Committee shall exercise jointly with the several bodies of Commissioners the power of making such orders :—

(i) under subsection (1) of section 47 of the Act, specifying any such classes of employment as are therein mentioned.

(ii) under subsection (7) of section 47 of the Act, extending the provisions of that section to other classes of employment.

(iii) under section 50 of the Act, for any matter in respect of which a special order may be made under that section.

(iv) under paragraph (*c*) of Part I of the First Schedule to the Act, for excluding outworkers or deferring the commencement of the Act as respects outworkers.

(v) under paragraph (*k*) of Part II of the said First Schedule, for the purpose of excluding employment as a member of the crew of a fishing vessel in such cases as are referred to in that subsection.

(vi) under paragraph (*l*) of Part II of the said First Schedule, for the purpose of excluding any class of employment of such a nature that it is ordinarily adopted as subsidiary employment only.

15. The Joint Committee alone shall exercise the following further powers, namely :—

(*a*) under subsection (1) of section 32 of the Act, the power of approving societies and institutions established in a British possession or foreign country and so that the satisfaction of the Joint Committee alone shall be required with regard to the matters in respect of

which the several bodies of Commissioners are required to be satisfied by that subsection.

(*b*) under subsection (2) of section 32 of the Act, the power of making arrangements for transfers of persons to and from societies and institutions established in a British possession or foreign state from and to approved societies or the Post Office Fund and for the determination of the amount to be transferred, and of the rights to which persons transferred are to be entitled.

(*c*) under section 33 of the Act, the power of making regulations subject to which an approved society may transfer from its account under Part I of the Act to its credit independently of the Act any sum which by that section it is entitled so to transfer.

(*d*) under section 42 of the Act, the power of prescribing the time allowed to an insured person to join an approved society or, in the case of any such person who has been expelled or has resigned from an approved society, the time allowed to him to join another approved society.

(*e*) under paragraph (*b*) of subsection (1) of section 43 of the Act, the power of prescribing the account to which transfer values are to be carried and the manner in which the same are to be dealt with under that subsection.

(*f*) under subsection (1) of section 46 of the Act, the power of prescribing the weekly sums to be contributed by the Admiralty and the Army Council respectively in respect of seamen, marines and soldiers who have not joined approved societies.

(*g*) under paragraph (*b*) of subsection (3) of section 46 of the Act, the power of prescribing the manner in which sums to be paid into the Navy or Army Insurance Fund under that paragraph are to be calculated.

(*h*) under paragraph (*b*) of subsection (1) of section 51 of the Act, the power of prescribing the manner in which sums payable under that paragraph by the managers of institutions carried on for charitable or reformatory purposes are to be calculated.

(*i*) under section 52 of the Act, the power of prescribing the manner in which sums payable under that section to the Board of Education, the Scotch Education Department, or the Superintendent of the Teachers' Pension Office (as the case may be), are to be calculated.

(*j*) under paragraph (*c*) of subsection (1) of section 60, the

power of prescribing the form in which the books and accounts of Insurance Committees are to be kept.

(*k*) under paragraph (10) of Part II of the Fourth Schedule to the Act, the power of prescribing the conditions subject to which contributions may be made to superannuation funds by way of additional benefit.

16. The Joint Committee shall exercise jointly with the several bodies of Commissioners the following further powers, namely :—

(*a*) under subsection (2) of section 9 of the Act, the power of consenting to reductions of the rate of sickness benefit or disablement benefit, and to provisions made for the grant of additional benefits under that subsection.

(*b*) under section 13 of the Act, the power of confirming a scheme for substituting additional benefits under that section.

(*c*) under subsection (2) of section 39 of the Act, the power of consenting to the formation by societies of an association under that section and of prescribing the conditions on which a society shall be entitled or allowed to join or to secede from an association.

(*d*) under section 62 of the Act, the power of recognising local medical committees, of making regulations subject to which such committees shall be consulted by Insurance Committees and district committees, and of determining the powers to be exercised by local medical committees.

(*e*) under section 73 of the Act, the power of granting certificates under that section.

(*f*) under paragraphs (*b*) and (*c*) of Part II of the First Schedule to the Act, the powers conferred on the several bodies of Commissioners by those paragraphs respectively.

Provided, that in exercising the powers mentioned in paragraphs (*a*), (*b*), (*c*), (*e*) and (*f*) hereof the Joint Committee shall, except in the case of the powers conferred by paragraph (*b*) of Part II of the First Schedule to the Act with regard to persons in employment under the Crown, be concerned with actuarial matters alone.

17. The Joint Committee shall exercise and perform, either alone or jointly with the several bodies of Commissioners, as the case may require, such of the powers and duties of such bodies under sections 57, 58, and 78 of the Act and otherwise as may be necessary to enable the Joint Committee to exercise and perform the several powers and duties of the Joint Committee under the Act and these Regulations, but without prejudice to

the exercise and performance by the several bodies of Commissioners of all or any of their powers and duties under the Act with regard to matters falling to be dealt with by them under the Act and these Regulations.

18. These Regulations shall be deemed to have had effect as from the twenty-eighth day of December, 1911.

Provided that anything done in pursuance of the provisional Regulations[1] made under the Act on the twenty-eighth day of December, 1911, shall, notwithstanding anything in these Regulations, be deemed to have been validly done and have full effect accordingly.

Dated this eleventh day of January, 1912.

[1] Being the same as pars. 1, 2, 3, 8 (1), (3), 11 (*a*), (*b*), 13 and 14 (*b*) of these Regulations.

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